

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

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DOUGLAS J. HORN and CINDY HARP-HORN,

Plaintiffs,

-against-

Civil Action No.
15-cv-701 FPG/MJR

MEDICAL MARIJUANA, INC., DIXIE ELIXIRS
AND EDIBLES, RED DICE HOLDINGS, LLC and
DIXIE BOTANICALS,

Defendants.

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805 Third Avenue
New York, New York

December 12, 2017
10:06 A.M.

EXAMINATION BEFORE TRIAL OF DR. CINDY ORSER,
an Expert Witness appearing on behalf of the
Defendants herein, taken pursuant to Notice, and
held at the above time and place before Terri
Fudens, a Stenotype Reporter and Notary Public of
the State of New York.

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FEDERAL STIPULATIONS

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(Orser Exhibit A, Nursing

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Article marked for Identification as

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of this date.)

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(Orser Exhibit B,

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O'Shaughnessy's 2013 Article marked

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for Identification as of this date.)

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(Orser Exhibit C, Orser Report

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marked for Identification as of this

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date.)

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(Orser Exhibit D, EMSL Lab

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Report marked for Identification as

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of this date.)

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(Orser Exhibit E, EMSL Emails

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marked for Identification as of this

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date.)

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(Orser Exhibit F, CannLabs

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Certificates of Analysis marked for

19

Identification as of this date.)

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(Orser Exhibit G, Label -

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Ingredients marked for Identification

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as of this date.)

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(Orser Exhibit H, Label - Dosage

24

marked for Identification as of this

25

date.)

1 CINDY ORSER

2 (Orser Exhibit I, Tamar Wise
3 Post marked for Identification as of
4 this date.)

5 (Orser Exhibit J, Magazine
6 Advertisement marked for
7 Identification as of this date.)

8 (Orser Exhibit K, Article-
9 Marijuana.com marked for
10 Identification as of this date.)

11 (Orser Exhibit L, Dixie FAQs
12 marked for Identification as of this
13 date.)

14 (Orser Exhibit M, Hempmedspx
15 FAQs marked for Identification as of
16 this date.)

17 (Orser Exhibit N, Section
18 1308.11 of CSA marked for
19 Identification as of this date.)

20 C I N D Y O R S E R, the Expert Witness
21 herein, having been first duly sworn
22 by Terri Fudens, a Notary Public of
23 the State of New York, was examined
24 and testified as follows:

25 EXAMINATION BY

1 CINDY ORSER

2 MR. BENJAMIN:

3 Q Please state your name for the
4 record.

5 A Cindy Orser.

6 Q Where do you presently reside?

7 A 4507 Apple Way, Boulder, Colorado.

8 Q Hi, Dr. Orser.

9 A Good morning.

10 Q Good morning. My name is Jeff
11 Benjamin. I am one of the lawyers for Douglas and
12 Cindy Horn in a lawsuit that they brought against
13 Medical Marijuana Inc. and the Dixie Elixirs
14 Company, among others.

15 I'm going to be asking you questions
16 about your report in this case as well as some of
17 your educational and experiential background. If
18 at any time you need me to clarify a question or
19 you don't hear it, please ask me to do so. I will
20 be happy to do so. Otherwise if I don't hear from
21 you, I'm going to expect an answer. Okay?

22 A (Nodding)

23 Q You have to answer out loud so the
24 court reporter can take down what we're saying.

25 A Right.

1 CINDY ORSER

2 Q Have you ever given a deposition
3 before?

4 A Yes.

5 Q In what case was most recent?

6 A It was for one of the employees I
7 supervise in Las Vegas who was in a car accident.

8 Q Was that an employment matter?

9 A No. It was about his injuries and
10 whether or not I believed his mental state had
11 been affected.

12 Q Were there issues of Medical
13 Marijuana in that case?

14 A No.

15 Q Does your testimony have anything to
16 do with Medical Marijuana whatsoever?

17 A No.

18 Q And how long ago was that?

19 A A year ago.

20 Q A year ago. Okay. Was that --

21 A About.

22 Q More or less.

23 Was that a deposition, was that a
24 trial?

25 A It was a deposition.

1 CINDY ORSER

2 Q Can you tell me the name of that
3 case?

4 A No.

5 Q Do you know what venue it was in; was
6 it in Federal Court, State Court?

7 A It was in Las Vegas. This is very
8 common there. They draw out these rear end
9 accidents.

10 Q Was your testimony at all with
11 respect to his mental state being impaired in some
12 way? What was your testimony there?

13 A Well, basically I did not know him
14 before the accident, so my testimony was, you
15 know, you're kind of wasting your time, because I
16 only know him after the accident, so I can't
17 comment if he was affected.

18 Q Okay. Was it scientific? Was your
19 testimony in any way scientifically based?

20 A No. It was just based from his
21 performance in the lab. So I mean he's my
22 laboratory director, so his role is analytical
23 chemistry.

24 Q Other than that, was there anything
25 else that you testified in?

1 CINDY ORSER

2 A A divorce.

3 Q Did anything in that case have
4 anything to do --

5 A No, it did not.

6 Q Other than those two that you
7 mentioned, any other testimony by deposition like
8 where we're sitting here today?

9 A No.

10 Q How about trial, had you ever
11 appeared in court?

12 A Only for a divorce.

13 Q How about by affidavit or written
14 statement? Have you ever offered an affidavit or
15 statement in support of one or the other sides in
16 a lawsuit?

17 A No.

18 Q I mean within the last four years,
19 for instance, for a time frame.

20 A No.

21 Q Where do you currently work today?

22 A I have my own consulting company, Big
23 Sky Biosystems, so I'm self-employed.

24 Q Is that the only employment that you
25 have now?

1 CINDY ORSER

2 A Well, it's a consulting company, so I
3 have clients that I work for.

4 Q Are you still with Digipath?

5 A Yes.

6 Q So Digipath still exists today?

7 A Yes.

8 Q What is your position at Digipath?

9 A I'm the chief science officer.

10 Q And how about at Big Sky, what is
11 your actual title?

12 A President.

13 Q And your daily functions first at Big
14 Sky, what do you do on a daily basis at Big Sky?

15 A I perform my consulting duties for my
16 clients.

17 Q Can you describe what some of your
18 consulting duties are at Big Sky?

19 A Well, my main client is Digipath
20 Labs. And as their chief science officer, I'm
21 really their spokesperson. So I go and give lots
22 of presentations. I still supervise 12 employees
23 in their flagship testing lab that I built out and
24 designed in Las Vegas.

25 I'm helping them move into the state

1 CINDY ORSER

2 of California with testing -- cannabis testing
3 labs, so I'm identifying key candidates, working
4 with vendors to get better deals on analytical
5 instrumentation, interacting with the construction
6 people who are doing the build-outs. You know, I
7 do research under their name and their facility
8 and write scientific publications. I write a
9 monthly blog for them.

10 Q What is the topic of the monthly
11 blog?

12 A It varies, but it's always cannabis
13 related.

14 Q What is the relationship then between
15 Big Sky and Digipath? I think you mentioned
16 something, but what is the general relationship
17 between those two companies?

18 A Well, I mean my consulting contract
19 with Digipath Labs is with Big Sky Biosystems.

20 Q Digipath itself has its own
21 customers; correct?

22 A Yes.

23 Q What are the type of customers that
24 Digipath has?

25 A Well, they're an independent

1 CINDY ORSER

2 third-party cannabis testing labs, so their
3 clients are cannabis cultivators and cannabis
4 producers in Nevada.

5 Q And is it fair to say that they send
6 you samples to analyze or test?

7 A Actually, in Nevada the testing labs
8 go out and collect the samples and bring them back
9 to the lab and analyze them.

10 Q In other words, somebody from
11 Digipath goes out and actually takes the samples?

12 A Mm-hmm.

13 Q Okay. If you could tell us briefly
14 about your educational background. Would it help
15 you for me to show you your CV?

16 A No.

17 Q What is your educational background?

18 A I have a Ph.D. from the University of
19 California at Berkeley in plant science and
20 microbiology. From there I did a post doc at
21 Perdue. I was hired as an assistant professor at
22 the University of Idaho in biochemistry and
23 bacteriology where I was awarded early tenure in
24 promotion.

25 Then I transitioned into biotech. I

1 CINDY ORSER

2 worked for Molecular Toxicology Company in Boulder
3 developing a transgenic mouse model to estimate
4 human mutation rate.

5 Then I was recruited to become the
6 director of scientific affairs for a company in
7 Princeton. During that time I met a group from
8 Washington, D.C. that offered me a position to
9 start a bio center division for a defense company.
10 And I worked for them for four and a half years
11 where I invented the A technology to measure
12 misfolded proteins, which was pre-onset, and spun
13 out my technology from the defense company and
14 started my own firm Add Life.

15 Q When was that; when did you start Add
16 Life?

17 A 2004 or '05. Something like that.

18 Q Okay.

19 A Add Life ended spinning out another
20 company called Cell Fire. Cell Fire still exists.
21 We acquired technology for the preservation of
22 human platelets. Then I ended up moving back to
23 Colorado. I started another company ASDx
24 Biosystems where we were developing rapid
25 bioassays for measuring bio-threat agents,

1 CINDY ORSER

2 biological toxins.

3 It was when I had ASDx that I got
4 another call from a headhunter asking me if I
5 would be interested in designing this Cannabis
6 testing lab because of my diagnostic experience.

7 Q When was that?

8 A That was in 2014. Also during that
9 time I had -- Big Sky Biosystems existed because I
10 also did a large consulting job for the U.S. Air
11 Force Surgeon General on writing a 400-page report
12 on how to modernize diagnostics within the Air
13 Force medical system.

14 Q That headhunter, was that the entity
15 that brought you to Digipath in 2014?

16 A Mm-hmm.

17 Q That's when you started building that
18 lab in Nevada; right?

19 A Right. Well, first I started writing
20 all the protocols, the SOPs.

21 Q SOPs meaning standard operating
22 procedures?

23 A Correct.

24 Q For what in particular, cannabis
25 testing labs?

1 CINDY ORSER

2 A Well, so every -- because we're a
3 certified lab and every protocol -- so every test
4 we do, there has to be an SOP. There are usually
5 several that detail exactly how that protocol
6 should be carried out. For example, potency
7 testing.

8 MR. BENJAMIN: Can you read that
9 answer back.

10 (The requested portion of the
11 record was read back by the
12 reporter.)

13 Q When you say certified, who did you
14 get certified by?

15 A The State of Nevada.

16 Q What is the certification for; is it
17 specifically cannabis testing, or is it called
18 something else?

19 A No. It is for being an independent
20 third-party cannabis testing lab.

21 Q Is that specific to the State of
22 Nevada?

23 A Yes.

24 Q Do you know if that exists in any
25 other state today?

1 CINDY ORSER

2 A It meets any state that has a Medical
3 Marijuana program. And if it has been mandated
4 that there be testing of the products, then some
5 agency within the state has to take on the
6 certification role, and it's usually the Public
7 Health Department.

8 Q And that's state to state; is that
9 correct?

10 A Yes.

11 Q Where at least Medical Marijuana
12 is --

13 A Well, or retail. Either one. It
14 varies by state.

15 Q Okay. But this is all with respect
16 to Medical Marijuana; correct, this certification?

17 A But now we also have retail in
18 Nevada, so we're going through that. They're
19 combining them.

20 Q What is the certification? How do
21 you get certified?

22 A You are audited. So an auditor from
23 the Department of Public and Behavioral Health,
24 that's what Nevada calls their health department,
25 so an auditor and a scientist from their

1 CINDY ORSER

2 department come. They go through all of your
3 documentation, so all of your SOPs they can go in.
4 So we have maintained chain of custody. They can
5 pick any sample number and ask to see the raw data
6 for that sample number to show that the tests were
7 actually done.

8 Q Are any other states certified in
9 that respect, to your knowledge?

10 A Yes.

11 Q Today?

12 A Yes. Colorado has a certification
13 program. California is just standing up a massive
14 one. You know, most states have some level of
15 that, if there's the requirement for testing the
16 products.

17 Q How about back in 2012, is that the
18 same -- was Nevada certified in 2012 -- excuse me.

19 A No.

20 Q Was there a certification process in
21 2012.

22 A Not that I know of.

23 Q When was the first certification
24 process for cannabis testing ever in the United
25 States?

1 CINDY ORSER

2 A Probably Colorado.

3 Q What year was that, to your
4 knowledge?

5 A It's got to be around 2012.

6 MR. BORON: He doesn't want you
7 to guess.

8 A I don't know absolutely.

9 Q When did the certification process
10 become instituted in Nevada?

11 A 2014.

12 Q What is potency testing, as you just
13 testified to?

14 A It refers to the analysis of the
15 cannabinoids.

16 Q Can you explain, for the record, what
17 a cannabinoid is?

18 A So cannabinoids are the unique
19 molecules that the cannabis plant makes that
20 everybody is interested to exploit. THC, CBD as
21 an example. In Nevada we test for 11
22 Cannabinoids.

23 Q Can you just tell us what those
24 acronyms are? For the clarity of the record, what
25 is CBD and what is THC?

1 CINDY ORSER

2 A CBD is cannabidiol and THC is
3 tetrahydrocannabinol.

4 Q So a subset of the field of cannabis
5 testing is potency testing. Is that a fair
6 statement?

7 A Yes.

8 Q Currently you test for 11 different
9 Cannabadiols; correct?

10 A Cannabinoids.

11 Q Cannabinoids. At the risk to our
12 order, can you give us a brief summary of the
13 difference, say, between those two that you
14 mentioned, CBD and THC, without getting
15 hypertechnical?

16 A Okay. Well, the biggest difference
17 is the receptors they bind to in the human body
18 and then resulting cascade of events. So most
19 simplistically, THC is the psychoactive, because
20 it binds to the CB1 receptor, which are in your
21 brain. Whereas CBD actually is an allosteric
22 inhibitor, so it actually changes the receptor so
23 THC can't bind.

24 So CBD has a lot of the same benefits
25 in terms of anti-inflammatory and analgesic, but

1 CINDY ORSER

2 it's not psychoactive.

3 Q Like THC; correct?

4 A Yes.

5 Q Are there federal guidelines for
6 cannabis testing?

7 A No.

8 Q To your knowledge, are there proposed
9 guidelines or regulations for cannabis testing
10 from a federal level?

11 A Not that I'm aware of.

12 Q Going back to your educational
13 background, I thank you for listing your
14 professional experience. Let's go back quickly to
15 your educational background.

16 Your BS was in general botany; is
17 that correct?

18 A Mm-hmm.

19 Q Do you have a major or a minor in
20 that field?

21 A My minor was philosophy.

22 Q Good mix.

23 You mentioned earlier your graduate
24 work at UC Berkeley?

25 A Mm-hmm.

1 CINDY ORSER

2 Q Was that in plant physiology
3 specifically?

4 A It was actually plant microbiology.

5 Q You might have mentioned this before,
6 but what was your postdoctorate research at
7 Purdue?

8 A The same. Biology.

9 Q Prior to your professional
10 experience, did any of your education involve
11 courses in pharmacology?

12 A No.

13 Q Did any of your education involve
14 medicinal chemistry?

15 A No.

16 Q How about toxicology; was there
17 anything in your education anyway that involved
18 the field of toxicology?

19 A No.

20 Q So your education is mainly involving
21 botany and plant pathology; is that correct?

22 MR. BORON: Objection as to
23 form.

24 Q Do you understand the question?

25 A I mean my formal degrees, yes.

1 CINDY ORSER

2 Q Now as to your professional
3 experience, the position at the University of
4 Idaho was in bacteriology and biochemistry; is
5 that correct?

6 A Yes.

7 Q Did any of your teaching or research
8 there have anything to do with testing marijuana?

9 A No.

10 Q Or anything with the pharmacological
11 effects of marijuana?

12 A No.

13 Q How about the safety of marijuana?

14 A No.

15 Q Those are things that you test for
16 now; correct?

17 A Right.

18 Q Your position at ZenoMetrics where
19 you developed -- I'm taking it from your CV now,
20 molecular assays to assess genetic mutation rates,
21 is that a fair statement?

22 A Mm-hmm.

23 Q Were those used for genetic
24 toxicology assessments?

25 A Yes.

1 CINDY ORSER

2 Q And not for other types of
3 assessments; correct?

4 MR. BORON: Objection as to
5 form.

6 Q Do you understand that question?

7 A Well, it's a broad question.

8 Q Like, for instance, LD50 assessments,
9 do you know what LD50 assessments are?

10 A Yes.

11 Q Those were specifically for genetic
12 toxicology, correct, the assays that were used at
13 Zeno Metrics?

14 A They were for genetic toxicology, but
15 the LD50s were part of the studies.

16 Q Fair enough. How about any of those
17 assays at Zeno Metrics that you were involved
18 with, did that have anything to do with marijuana
19 testing?

20 A No.

21 Q What was your role at New Cycle
22 Therapy?

23 A My role was to secure federal funding
24 and to expand the utility of the company's
25 technology outside of cleaning up brownfields and

1 CINDY ORSER

2 depleted uranium sites for the military.

3 Q That had nothing to do with cannabis
4 and marijuana; correct?

5 A No.

6 Q What is a nutraceutical product?

7 A It's similar to dietary supplements.

8 Q Did you develop neutrasuitical
9 products?

10 A Yes.

11 Q What was that all about? I don't
12 think you mentioned that. What was the
13 development? What did it involve?

14 A So plants, certain species of plants
15 can hyper-accumulate heavy metals that would be
16 toxic for any other organism. So you can use that
17 ability to develop novel products.

18 So we made a transgenic Brassica
19 plant that had a methyltransferase gene in it so
20 we could modify Solanum. So Solanum is a heavy
21 metal that can substitute for one of the amino
22 acids, and it's known to have anticarcinogenic
23 activity.

24 Q But again, nothing having to do with
25 cannabis; correct?

1 CINDY ORSER

2 A No.

3 Q Were those having anything to do with
4 oncology when you were there?

5 A Anticarcinogenic activity.

6 Q Arete Associates was also on your CV.
7 Do you remember that?

8 A Arete.

9 Q You said that it involved biosensor
10 instrument for the Department of Defense; is that
11 correct, development?

12 A I was hired to start a biosensor
13 division.

14 Q But nothing there had anything to do
15 with marijuana testing; right?

16 A Right.

17 Q Or cannabis.

18 You mentioned AddLife. You started
19 AddLife; is that correct?

20 A Yes.

21 Q That was developing molecular
22 diagnostic kits, is that generally what happened
23 at AddLife?

24 A We were developing assays to screen
25 the human blood supply for misfolded proteins,

1 CINDY ORSER

2 like prion proteins.

3 Q But nothing there had anything to do
4 with marijuana analysis or product testing; right?

5 A No.

6 Q ASDx Biosystems, you mentioned that;
7 correct?

8 A Yes.

9 Q Were any of those assays developed
10 having to do with marijuana, measuring Marijuana?

11 A No.

12 Q In the State of Montana as a research
13 program director, what were the fields of research
14 that you were involved with?

15 A I oversaw all the research programs
16 under the Commissioner of Higher Education. It
17 was vast subject matter.

18 Q But on the issue of marijuana --

19 A There was no marijuana.

20 Q So in your position at Big Sky now,
21 can you describe what consulting services Big Sky
22 offers to its customers?

23 A Yes. I mean you already asked me
24 that.

25 Q I think we talked about Digipath.

1 CINDY ORSER

2 But if you can tell us about Big Sky,
3 what were the consulting services?

4 A My main client is Digipath, so we
5 covered that. I basically oversee their whole
6 program of cannabis testing. I also consult for
7 cultivation facilities in Colorado to provide
8 advice on how to pass microbial testing
9 requirements. I give them advice if they failed
10 for pesticides, and I interface with the Denver
11 city attorney on those issues.

12 I'm involved in another lawsuit in
13 Colorado, cannabis for a pesticide matter. So
14 everything Big Sky does really for the last five
15 years has been cannabis centered.

16 Q What is the lawsuit that you
17 mentioned; what does that have to do with?

18 A Pesticide matter.

19 Q Who were the parties in that? Is
20 that a government action?

21 A It's -- no. It's a cultivation
22 facility suit, a testing lab for negligence in
23 finding pesticides in their product.

24 Q What's the name of that case?

25 A Gobi versus HGS, or HGS versus Gobi,

1 CINDY ORSER

2 I guess.

3 Q How do you spell Gobi?

4 A G-O-B-I.

5 Q Did you give testimony in that case?

6 A Not yet.

7 Q Do you know how far along that case
8 is?

9 A They've given me the first set of
10 documents, and I'm writing my opinion. And now
11 they've -- they are in discovery, so they've asked
12 for additional information from Gobi.

13 Q Are you an expert for the cultivator
14 or for the other party you mentioned?

15 A For the cultivator.

16 Q Is it fair to say that the percentage
17 of your work is 100 percent in the cannabis
18 diagnostics industry, or is it some lesser
19 percent?

20 A No. It's a hundred percent.

21 Q And your work in Cannabis
22 diagnostics, is assay development or is it
23 strategic policy?

24 A Both.

25 Q Do you interact with the government

1 CINDY ORSER

2 officials with respect to your work?

3 A Yes.

4 Q Is that specifically the Nevada
5 Department of Behavioral Health?

6 A And also Nevada Department of
7 Taxation, which now oversees the programs. But
8 also -- I'm starting to interact with agencies in
9 California, and I'm on the Colorado Lab Counsel.

10 Q Are you here representing Big Sky, or
11 Digipath or both?

12 A Representing them?

13 Q Well, your report says Big Sky on it.

14 A Yes.

15 Q Why doesn't your report say Digipath,
16 for instance?

17 A Well, because this doesn't relate to
18 Digipath. I mean this isn't their -- Digipath
19 doesn't get involved in lawsuits.

20 Q Big Sky is not an entity that tests
21 cannabis though; is that correct?

22 A Correct.

23 Q You're a principal at Big Sky. Are
24 you also a principal at Digipath?

25 A What do you mean by principal?

1 CINDY ORSER

2 Q Do you have an ownership interest in
3 Digipath?

4 A It's a public company.

5 Q Are you on the board of Digipath?

6 A No.

7 Q Digipath tests cannabis plant
8 material; correct?

9 A Yes.

10 Q And to be more specific, it's the
11 cannabis sativus L material; is that a fair
12 statement? Is that correct?

13 A The speises, yes.

14 Q The species of plant; correct?

15 A Mm-hmm.

16 Q Does Digipath also test compounds in
17 formulated products?

18 A Yes.

19 Q So is it fair to say that you're
20 familiar with the Dixie product that's alleged
21 here; correct?

22 A I've never seen it.

23 Q Have you ever tested Digipath?

24 A No.

25 Q Is it fair to say that the product at

1 CINDY ORSER

2 issue here is a formulated cannabis product?

3 A Hemp product.

4 Q So then the question is does Digipath
5 test for cannabinoid compounds in formulated
6 products?

7 A Yes.

8 Q Does it test for THC and metabolites
9 in human samples?

10 A No.

11 Q It tests for those in just simply
12 plant samples; is that correct?

13 A Correct.

14 Q Other than the certifications in
15 Nevada that you mentioned, are there any other
16 accreditations that Digipath has?

17 A No.

18 Q So from your education and your
19 professional experience, none of those have
20 involved the interpretation of marijuana
21 constituents in human tissues; isn't that correct?

22 A I've been asked to interpret
23 toxicology reports for the judge's office in Las
24 Vegas.

25 Q On what subject?

1 CINDY ORSER

2 A To give my opinion whether or not the
3 individual would have been impaired at the time of
4 an accident.

5 Q Did you write anything for a judge?

6 A It was verbal.

7 Q Was there a record given in that
8 case? Was a record taken? In other words, was
9 there a court reporter taking down what you said?

10 A I don't think so.

11 Q Was there a case that that was
12 associated with?

13 A Yes, it was a case.

14 Q What was that case name?

15 A I don't know. It was a woman who ran
16 her minivan onto the sidewalk on the strip and
17 ended up killing a young mother.

18 Q How long ago was that?

19 A Maybe two, two and a half years.

20 Q What did you analyze in that matter
21 that formed the basis of your opinion as to the
22 impairment?

23 A I discussed the various metabolites
24 and which metabolite is psychoactive and which
25 isn't.

1 CINDY ORSER

2 Q Okay. Did you review any sort of
3 blood or urine testing?

4 A Yes.

5 Q Which one?

6 A Blood.

7 Q And you were looking for THC in the
8 blood test?

9 A And metabolites, yes.

10 Q In that case, was there the existence
11 of THC in the blood sample that you reviewed?

12 A It wasn't THC. There was a little of
13 the 11 hydroxy, which is psychoactive.

14 Q A completely different substance,
15 isn't that correct, than THC?

16 A It's the first metabolite.

17 Q The first metabolite in marijuana?

18 A The first metabolite in the human
19 body. From THC it goes to 11 hydroxy, THC.

20 Q Was the issue in that case a
21 marijuana cigarette; was that the allegation, that
22 there was --

23 A Marijuana use.

24 Q Marijuana use. But in that case, was
25 there anything you reviewed as to a formulated

1 CINDY ORSER

2 product?

3 A No.

4 Q Do you have any specific training or
5 experience in drug product formulation?

6 A Yes, I have done some formulation.

7 Q Can you describe for me what that
8 was?

9 A A company called O.pen Vape in
10 Denver, Colorado. I did their first formulation
11 for Vape Pens, v-A-P-E, Vape cartridges.

12 Q Is that related at all to Cannabis
13 testing?

14 A Not directly.

15 Q So what chemicals go into a Vape pen
16 or what substances go into a Vape pen that you
17 used to formulate the drug?

18 MR. BORON: Dr. Orser, when he's
19 asking the question, wait until he
20 gets to the end of it, because you
21 won't exactly know where's he's going
22 with it. Then after he's finished
23 his question, then you know how to
24 begin to answer.

25 A Can you repeat the question?

1 CINDY ORSER

2 (The requested portion of the
3 record was read back by the
4 reporter.)

5 MR. BORON: Objection as to
6 form.

7 MR. SHEPS: I join in the
8 objection.

9 Q Do you understand the question?

10 A Right. I do. So the dried cannabis
11 flower or trim is extracted with some type of
12 solvent to concentrate the cannabinoids. And this
13 process results in a very, very, very viscous,
14 think honey, kind of material. So it has to be
15 diluted with something to get it into the
16 cartridge and to also dilute the concentration.

17 Q Is there any process there where
18 you're analyzing THC contents?

19 A Yes, of course. You have to analyze
20 before and after.

21 Q Okay so what do you do with the THC
22 content in that process? Is it something that --
23 is it an extraction process or a dilution, or
24 something else?

25 A To analyze it?

1 CINDY ORSER

2 Q Right.

3 A Yes, you extract it. We use HPLC,
4 high pressure liquid chromatography.

5 Q Is that something for which you
6 produce a Certificate of Analysis for?

7 A Yeah.

8 Q Who are you producing that for, is
9 that for O.pen Vape?

10 A At that time, yes.

11 Q And is that Certificate of Analysis
12 something where you breakdown the CBD content and
13 the THC content?

14 A Correct.

15 Q Any other content in that?

16 A Not then. That was five years ago.

17 Q Okay. So what approximate year was
18 that; was that 2012, would you say?

19 A It was five years ago.

20 Q Any more of that experience in drug
21 product formulation?

22 A I also advised clients of Digipath in
23 formulation.

24 Q Have you ever advised Dixie, any of
25 the Dixie companies?

1 CINDY ORSER

2 A I have not.

3 Q How about Medical Marijuana?

4 A No.

5 Q Can you give me an example of a
6 company or companies that you advised on that
7 formulation?

8 A There's is a company that we've been
9 working with for almost a year to formulate -- do
10 you know those Keurig cup things, the coffee, if
11 they want to make infused coffee and tea. So
12 that's been a long big project.

13 Q How about drug product manufacturing,
14 are you involved at all in any drug product
15 manufacturing?

16 A No.

17 Q Are you involved at all in controlled
18 substance manufacturing?

19 A No.

20 Q How about drug product labeling
21 requirements, do you have any training or
22 experience in that?

23 A Again, we advise our clients.

24 Q What do you advise clients on the
25 subject of labeling, as an example?

1 CINDY ORSER

2 A We help them interpret the Nevada
3 requirements for labeling.

4 Q What types of clients do you advise
5 on labeling in Nevada?

6 A Any of the cultivation clients or
7 producers.

8 Q So you're familiar with the Nevada
9 requirements on labeling for drug products;
10 correct?

11 A For cannabis products.

12 Q For Cannabis. How about controlled
13 substance labeling, do you have any experience --

14 A No.

15 Q -- or training in that?

16 A No.

17 MR. BENJAMIN: You started
18 answering again before he got to the
19 end of the question.

20 Q So in Nevada, you don't advise
21 clients on labeling for THC content; is that
22 correct?

23 A Actually, we do.

24 Q You do. So the answer to the
25 question if you have any experience in controlled

1 CINDY ORSER

2 substance labeling is yes; is that right?

3 A Well, controlled substance is a
4 federal category. I'm only dealing at the state
5 level.

6 Q Okay. So does Nevada consider THC a
7 controlled substance?

8 A Not in the state. Not within the
9 state.

10 Q Right. So in terms of controlled
11 substance, does Nevada simply defer to the federal
12 requirements of controlled substances?

13 MR. SHEPS: Objection, but you
14 can answer.

15 A There's a disconnect between the
16 federal view of cannabis and THC and the state, 28
17 states now.

18 Q So is it your view that there are
19 28 -- those 28 states don't define THC as a
20 controlled substance? I'm trying to get your
21 answer.

22 MR. BORON: Objection to form.

23 MR. SHEPS: Objection.

24 Q I'm trying to understand your answer.
25 In those 28 states that you

1 CINDY ORSER

2 mentioned, is it that those states don't view THC
3 in particular as a controlled substance?

4 MR. SHEPS: Objection, but you
5 can answer.

6 A I think each of the states -- it's a
7 state-by-state decision on how they grapple with
8 that disconnection between federal law and state
9 law, but I'm not a lawyer. I'm a scientist.

10 Q I understand that. I'm not asking
11 you for a legal opinion, but I think what I'm
12 trying to understand is your statement that
13 there's a disconnect; correct?

14 A Nodding.

15 Q Are you saying that there are
16 different definitions state to state as to what a
17 controlled substance is, and we can focus on THC
18 in particular, as opposed to what the federal
19 definition is?

20 MR. SHEPS: Objection.

21 MR. BORON: Objection as to
22 form.

23 A I don't know really how they -- how
24 they reconcile that difference.

25 Q So then what has been your experience

1 CINDY ORSER

2 in advising clients as to controlled substance
3 labeling?

4 A None.

5 Q Didn't you just say that you had some
6 advice as to specifically THC labeling for
7 clients?

8 MR. BORON: Objection as to
9 form.

10 MR. SHEPS: I join.

11 A Correct, at a state level.

12 Q When you gave that advice, were you
13 mindful of the federal controlled substance
14 labeling requirements, or were you thinking more
15 of the particular state that you were advising in?

16 MR. BORON: Objection as to
17 form.

18 MR. SHEPS: I join in that.

19 A I'm strictly interpreting the state
20 requirements for labeling of these products.

21 Q Who are some clients or a client that
22 you advised on controlled substance labeling in,
23 say, Nevada for instance?

24 MR. SHEPS: Objection.

25 A Well, we keep going back to this, but

1 CINDY ORSER

2 I mean nowhere in the Nevada rules and regulations
3 does it specifically refer to cannabis as Schedule
4 1.

5 Q Okay. But you stated on the record,
6 and correct me if that's not true, that you do
7 advise clients in a specific state as to
8 controlled substance labeling?

9 A No. For THC, for cannabinoids. And
10 it's really just a mathematical issue. A lot of
11 our clients don't understand algebra.

12 Q My question was simply to give me an
13 example of a client that you've given that advice
14 to?

15 A Silver State.

16 Q Are they a lab?

17 A No. No. We're the lab. Digipath is
18 the lab.

19 Q It's Digipath?

20 A Yes.

21 Q Silver State is a cultivator?

22 A They're fully integrated, so that
23 means they have cultivation, production and
24 dispensary.

25 Q All right. Thank you. How about any

1 CINDY ORSER

2 training or experience in the distribution of
3 controlled substances?

4 A Is that a question?

5 Q Yes.

6 A No experience.

7 Q Still on your CV, if you can remember
8 back to your Branson contract section, are there
9 any grants or contracts that relate to the
10 analysis and interpretation of marijuana
11 substances in formulated products?

12 A No.

13 Q The same question as to patents. Any
14 patents on the analysis or interpretation of
15 marijuana?

16 A No.

17 Q Are there any research publications
18 that you have made with respect to the analysis or
19 interpretation of marijuana substances in
20 formulated products?

21 MR. BORON: Objection to the
22 form.

23 MR. SHEPS: I join in that.

24 A No.

25 MR. BORON: When you say made,

1 CINDY ORSER

2 are you asking whether she has
3 written or published?

4 MR. BENJAMIN: Yes.

5 Q Did you understand my question to say
6 that? Have you written anything regarding the
7 analysis or interpretation of marijuana
8 substances?

9 A Just blogs.

10 Q Any particular blog that you can
11 name?

12 A No.

13 Q In other words, a marijuana.com blog
14 or something else?

15 A No. They're on Digipathlabs.com. My
16 blogs are all there.

17 Q Okay. I will hand you what's been
18 marked as Orser -- Exhibit Orser A. I have a copy
19 for counsel.

20 If you could take a look at that,
21 please.

22 A Okay.

23 Q Have you had a chance to familiarize
24 yourself with that exhibit?

25 A Yes.

1 CINDY ORSER

2 Q What is that exhibit?

3 A It's an article I wrote for a
4 cannabis nursing magazine back in 2016.

5 Q Was that on the Digipath blog?

6 A No. This is in a magazine.

7 Q So this was written -- you wrote this
8 in 2016 for nurses and health care providers;
9 correct?

10 A Specifically nurses.

11 Q Was this a marketing piece for
12 Digipath as well as the information that is
13 contained in it?

14 A Their logo is on it.

15 Q Is that a yes?

16 A Well, it depends upon your
17 interpretation. I mean since their logo is here,
18 I would say yes.

19 Q I mean you wrote this article;
20 correct?

21 A Yes.

22 Q You wrote this article in part to
23 attract clients for Digipath?

24 A No. I was asked to write this
25 article.

1 CINDY ORSER

2 Q By whom?

3 A The magazine.

4 Q Was this article written at all for
5 political purposes?

6 A No.

7 MR. BORON: Objection as to
8 form.

9 Q Why did they ask you to write this
10 article?

11 A There's a huge lack of information
12 out there for the public and nurses who were
13 interested in being able to advise their patients.
14 This is sort of a primer.

15 Q It's a primer on what?

16 A On the need for standardization and
17 testing of cannabis products.

18 Q So it's fair to say this is -- this
19 is technical or practice related to what's done at
20 Digipath; correct?

21 A Right. It's about the role of a
22 testing lab.

23 Q It's not a peer reviewed article;
24 correct?

25 A It was not peer reviewed.

1 CINDY ORSER

2 Q Do you know if Digipath got any new
3 customers from this article? In other words, did
4 somebody call and say saw your article. It looks
5 great. Can you do some testing for us?

6 MR. BORON: Objection as to
7 form.

8 MR. SHEPS: I join in that.

9 A I don't believe so.

10 Q Did you ever offer this article to
11 anybody as sort of an introduction to the services
12 at Digipath?

13 A I did not.

14 Q Who owns Digipath?

15 A It's public.

16 Q Do you know who the officers are at
17 Digipath?

18 A Of course.

19 Q Can you tell me who they are?

20 A Joe Bianco is the CEO, Todd Denkin is
21 the COO, and Todd Peterson is the CFO.

22 Q Do you belong to any professional
23 organizations that are associated with forensics,
24 science or toxicology?

25 A No.

1 CINDY ORSER

2 Q Take a look, please, at the
3 introductory paragraph of that article that is
4 Orser A.

5 Do you see the introductory
6 paragraph?

7 A The first paragraph?

8 Q Right. The very first paragraph.

9 A Right.

10 Q I'm reading from it. "As Medical
11 marijuana legalization creeps across the country
12 state by state in defiance of Marijuana's schedule
13 1 status at the federal level."

14 Do you see that part?

15 A Yes.

16 Q That's what you're talking about when
17 you said previously that there is a disconnect; is
18 that correct?

19 A Yes.

20 Q Are states defying the Schedule 1
21 status of marijuana?

22 A They're ignoring it.

23 Q That's a form of defiance; correct?

24 A (Nodding)

25 Q When you say they're ignoring it,

1 CINDY ORSER

2 what are the practical ways that states -- for
3 instance, you're in Nevada. What's a practical
4 way that Nevada, if they do, ignored the Schedule
5 1 requirements or status?

6 A By rolling out their medical and
7 retail marijuana programs.

8 Q Are those programs limited to
9 consumers or other entities in Nevada?

10 A Up until very recently, Nevada
11 allowed reciprocity with California. So if you
12 had a Medical Marijuana card from California,
13 Nevada would accept it. But that's no longer the
14 case.

15 Q California doesn't accept the card
16 from Nevada?

17 A No. It's the other way around.
18 California now has their own program, regulated
19 program. It starts January 1st.

20 Q But those two states are states in
21 which Medical Marijuana is legal; correct?

22 A Yes.

23 Q My question really goes to those
24 states where Medical Marijuana is not considered
25 legal.

1 CINDY ORSER

2 My issue that I asked you about was
3 the disconnect or the defiance of the state law.
4 Excuse me, the defiance of the federal guideline
5 of Schedule 1; correct?

6 A (Nodding)

7 Q Is that defiance in part selling
8 Medical Marijuana products to states where Medical
9 Marijuana is not legal?

10 MR. SHEPS: Objection.

11 MR. BORON: Objection as to
12 form.

13 A No.

14 Q One of the examples of the defiance
15 that you just mentioned was between, I guess,
16 Nevada and California, I think; wasn't that your
17 testimony?

18 MR. BORON: Objection as to
19 form.

20 MR. SHEPS: Objection.

21 A I just said they had reciprocity.

22 Q Okay. So what then is an example of
23 the defiance that you mentioned of a state of the
24 federal Schedule 1 status?

25 MR. BORON: Objection as to

1 CINDY ORSER

2 form.

3 A It's a state, any state, it could be
4 New York, knowing that there's a federal Schedule
5 1 ruling on cannabis, yet that state, by virtue of
6 it's voters' wishes, stands up for the cannabis
7 program, so that within the state, there can be
8 this commerce.

9 Q Within the state there could be that
10 commerce; correct?

11 A (Nodding)

12 Q But from Nevada to other states,
13 there cannot be that commerce; correct?

14 MR. SHEPS: Objection.

15 MR. BORON: Objection as to
16 form.

17 A It depends on what's in the product.

18 Q What's in the product is governed by
19 a federal -- in this case, specifically a Schedule
20 1 guideline; right?

21 MR. BORON: Objection as to
22 form.

23 A Can you restate that question?

24 Q Sure.

25 MR. BENJAMIN: What was the last

1 CINDY ORSER

2 answer? Can you read back the last
3 answer?

4 (The requested portion of the
5 record was read back by the
6 reporter.)

7 Q So let's talk specifically about THC,
8 which is the issue here.

9 It is perfectly legal and legitimate,
10 in your opinion, for a Nevada company to sell,
11 manufacture or distribute a product containing THC
12 within Nevada; correct?

13 MR. SHEPS: Objection.

14 THE WITNESS: What's the
15 objection?

16 Q Well, now you're acting like a
17 lawyer.

18 MR. BENJAMIN: Read it back,
19 please.

20 (The requested portion of the
21 record was read back by the
22 reporter.)

23 MR. SHEPS: I restate my
24 objection.

25 A Yes.

1 CINDY ORSER

2 Q It would not be legal to distribute a
3 product containing THC from Nevada to a state
4 that -- where Medical Marijuana is not legal;
5 correct?

6 MR. SHEPS: Objection.

7 MR. BORON: Objection to form.

8 A Only if that product was greater than
9 .3 percent THC.

10 Q THC, we agree, is a federal Schedule
11 1 controlled substance; correct?

12 MR. SHEPS: Objection.

13 A At the federal level.

14 Q So the answer is yes?

15 A Yes.

16 Q Other than Nevada, are there other
17 states that act in defiance of that Schedule 1
18 status as you state in the article?

19 A Yes.

20 Q Are those the states you list in the
21 next sentence, Washington -- I'm quoting --
22 Washington, Massachusetts, Oregon, California?

23 A Those states have retail marijuana
24 programs. States can either have medical or
25 retail. I mean medical usually precedes retail.

1 CINDY ORSER

2 Q But those are the states that you are
3 stating here are acting in defiance of the
4 Schedule 1 status; is that true?

5 A That's a subset, yes.

6 Q You wrote this article in
7 March/April, 2016; right?

8 MR. BORON: Objection as to
9 form.

10 A That's when it was published.

11 Q So you probably wrote it sometime
12 before that?

13 A Yes.

14 Q You stated in the next sentence that
15 what is missing, and I'm quoting, "What is missing
16 is standardization of Medical Marijuana testing;"
17 right? Do you see that section?

18 A Yes.

19 Q That was the case when you wrote this
20 article sometime before March/April of 2016;
21 correct?

22 A (Nodding)

23 Q And that certainly was the case back
24 in 2012, which is the time when the plaintiff is
25 alleging he took this product; correct?

1 CINDY ORSER

2 MR. SHEPS: Objection.

3 MR. BORON: Objection as to
4 form.

5 A Yes.

6 Q Today, a little over a year later, is
7 that still the case?

8 A Yes.

9 Q In play now, are there efforts that
10 you know of to standardize Medical Marijuana
11 testing?

12 A Yes.

13 Q Where first?

14 A There's many organizations, some of
15 which I'm a member of. The Association of
16 Commercial cannabis Labs. There's the American
17 Oil Chemists' Society. There's the American
18 Chemical Society. There's the Association of
19 Official Chemists. No. Association of --
20 Official Association of Analytical Chemists.

21 There's several very well known
22 groups that are trying to work together to produce
23 validated protocols, much like what exists within
24 the EPA.

25 Q Are those protocols an effort to make

1 CINDY ORSER

2 it national or federal standards?

3 A The effort is to create
4 standardization across the network of existing
5 cannabis testing labs.

6 Q So the effort is only concentrated in
7 those states that you mentioned in this article;
8 true?

9 A The states that have cannabis
10 programs, yes.

11 Q Is there any effort outside of those
12 states where Medical Marijuana is not yet legal to
13 bring standardized cannabis testing to light or to
14 the floor?

15 A Not that I know of.

16 Q When you say lack of federal
17 oversight by the FDA, EPA and Department of
18 Agriculture, what did you mean in that statement,
19 in that last sentence of that paragraph?

20 MR. BORON: For the record, are
21 you citing from her article?

22 MR. BENJAMIN: Yes. I'm sorry.
23 It's the last sentence in the first
24 paragraph.

25 A Well, normally any food or

1 CINDY ORSER

2 agricultural commodity where there's the use of
3 pesticides and people are ingesting, enjoys some
4 level of federal oversight so that the consumer
5 can have more confidence in that there's a quality
6 assurance assumed inherent in the products, and
7 that doesn't exist currently except on a
8 state-by-state basis.

9 Q So what you're referring to there was
10 really a safety or quality assurance issue;
11 correct?

12 A Yes. I mean it is about public
13 safety.

14 Q That was not intended to address the
15 controlled substance part of cannabis testing,
16 correct?

17 A Correct.

18 MR. SHEPS: Go off the record.

19 (At this time, a brief recess
20 was taken.)

21 CONTINUED EXAMINATION

22 BY MR. BENJAMIN:

23 Q Dr. Orser, if you could please take a
24 look under the paragraph, still on the first page
25 under standardization of cannabis testing, that's

1 CINDY ORSER

2 the heading?

3 A Mm-hmm.

4 Q In the middle of that paragraph, and
5 I quote, you write: The standards that federal
6 regulations would specify for the cannabis
7 industry in lieu of each state figuring it out on
8 their own include: Uniform batch and sample size
9 for testing, testing frequency, sample
10 preparation, use of certified reference standards,
11 and standard operating procedures, et cetera.

12 Do you see that part?

13 A Yes.

14 Q You believe that there should be
15 federal regulations as to cannabis testing; right?

16 MR. BORON: Objection as to
17 form.

18 A I believe that the industry would
19 benefit from federal oversight of some of these
20 functions.

21 Q Instead of letting states figure it
22 out on their own; correct?

23 A From a standpoint of standardization,
24 yes.

25 Q The first thing you said there was

1 CINDY ORSER

2 uniform batch and sample size for testing. That's
3 just simply -- strike that.

4 In other words, there are variable --
5 when you test cannabis at Digipath, you give
6 variable batch and samples sizes I guess?

7 A No. It's established. In Nevada a
8 batch is 5 pounds of cured flower or extract that
9 has been made from 15 pounds of trim.

10 Q And that differs from state to state?

11 A Yes.

12 Q Thank you. If you could skip to the
13 bottom of that page under the heading Quality
14 Assurance Challenges, and there's sort of a
15 subparagraph where you start as pesticide
16 residues. Do you see that part?

17 A Yes.

18 Q The second to the last sentence says:
19 When it comes to pesticides, the label on the
20 container is the law.

21 Do you see that?

22 A Yes.

23 Q Can you elaborate on what you were
24 saying there, as to pesticides anyway?

25 A So pesticides have a label that says

1 CINDY ORSER

2 what crops you're allowed to use them on. And
3 that's the job of the EPA. And because -- because
4 of the disconnect at the federal level, there have
5 been no pesticide trials carried out on Cannabis
6 to know what a tolerance limit should be.

7 Q So there's a label on pesticides.

8 Are there controlled substances
9 within pesticides?

10 A Not to my knowledge.

11 Q So is there a certain legal
12 requirement for labels for pesticides?

13 A Yes.

14 Q What is that legal requirement?

15 MR. SHEPS: Objection.

16 A It's the props that that pesticide
17 has been approved for use on.

18 Q Is that a federal requirement?

19 A Yes.

20 Q Is there a statute that that applies
21 to?

22 MR. SHEPS: Objection.

23 A I don't know. I'm sure it does.

24 Q Okay. Thank you.

25 On page -- actually, it's page 9 of

1 CINDY ORSER

2 the article. It's the second page of the exhibit,
3 but it's page 9 of the article under the heading
4 the major plant Cannabinoids, do you see that?

5 A Yes.

6 Q And the sentence says
7 tetrahydrocannabinol, otherwise known as THC. I
8 should say THC is in parentheses, is a powerful
9 psychoactive agent, analgesic, muscle relaxant,
10 antispasmodic, neuroprotective antioxidant that
11 delivers 20 times the anti-inflammatory power of
12 aspirin and twice the power of Hydrocortisone.

13 Do you see that paragraph?

14 A Yes.

15 Q THC is a wonder drug; isn't it?

16 MR. SHEPS: Objection as to
17 form.

18 Q Can you answer the question?

19 A It's pretty amazing.

20 Q Did you ever describe marijuana as a
21 wonder drug?

22 A No.

23 Q Are you an advocate of keeping THC in
24 formulated cannabis products?

25 A Yes.

1 CINDY ORSER

2 Q Why?

3 A Well, to the best of our knowledge,
4 THC is a key contributor to the effectiveness of
5 cannabis. So removing THC from cannabis per se
6 wouldn't make sense.

7 Q Is it fair to say that a product, and
8 I mean a formulated product, we're talking about a
9 formulated product in this case, would be
10 ineffective without any THC?

11 A No.

12 Q What then makes a product effective
13 without THC? What component of a formulated
14 Medical Marijuana product would make it effective
15 without THC?

16 A CBD.

17 MR. SHEPS: Objection.

18 Q Okay. CBD is not a Schedule 1 drug;
19 correct?

20 MR. SHEPS: Objection.

21 A I don't believe so.

22 Q Are you aware of the Schedule 1
23 substances?

24 A I think there's three.

25 Q There are three in your line of work,

1 CINDY ORSER

2 or there are three in total that you know of?

3 A The federal statute I believe lists
4 three drugs as Schedule 1.

5 Q What are those, to your knowledge?

6 A Ecstasy, marijuana and one of the
7 Opioids, but I don't remember if it's -- I don't
8 remember the third one.

9 Q Are you familiar with the substances
10 that are in the Schedule 1 drugs that make them
11 the controlled substance?

12 A In part.

13 Q THC is one; correct?

14 A THC is the component in marijuana. I
15 don't remember the chemical in Ecstasy.

16 Q So if you are -- going back to my
17 question, if you were an advocate of, I guess,
18 leaving THC in the formulated products, is that --
19 the question is can you be unbiased and give an
20 unbiased opinion in this case given that
21 statement?

22 A Yes.

23 MR. BORON: Objection as to
24 form.

25 MR. SHEPS: I join in the

1 CINDY ORSER

2 objection.

3 A Because I believe when you first
4 phrased that question, you said cannabis
5 formulations. This case involves hemp
6 formulations.

7 Q So tell us what the difference is
8 between hemp and cannabis formulations.

9 A I can't possibly answer that.
10 There's thousands of formulated products out there
11 for cannabis and hemp.

12 Q You don't test hemp products?

13 A We do.

14 Q You do test hemp products?

15 A Yes.

16 Q And you test them at Digipath?

17 A Digipath Labs, yes.

18 Q For example, what type of hemp
19 products do you test at Digipath?

20 A Hemp extracts and distillates and
21 also the plant.

22 Q Is that known as industrial hemp or
23 is that known as something else?

24 A Industrial hemp.

25 Q The plant is known as industrial

1 CINDY ORSER

2 hemp; correct?

3 A (Nodding)

4 Q Industrial hemp itself contains THC
5 as a general rule?

6 MR. BORON: Objection as to
7 form.

8 MR. SHEPS: Objection.

9 A It can have very small amounts. It
10 depends on the genetics of the plant.

11 Q So if you were asked to analyze
12 industrial hemp plant at Digipath, you're saying
13 that some samples that you either take, Digipath
14 takes themselves or are sent to you at Digipath
15 contain -- some samples contain THC and some do
16 not contain THC?

17 A Correct.

18 Q Is there a certain type of hemp that
19 does contain THC as opposed to those that don't?

20 A There's hundreds of strains of hemp,
21 and there's an explosion of amateur plant breeders
22 out there. So the heterogeneity is high.

23 Q Do you know what type of hemp in
24 particular the Dixie defendants or Medical
25 Marijuana defendant here used to make its Dixie X

1 CINDY ORSER

2 product?

3 MR. SHEPS: Objection as to
4 form.

5 A No.

6 Q Were you ever informed by anybody at
7 any of the defendants as to what type of hemp
8 product they use?

9 MR. BORON: Objection as to
10 form.

11 A Related to this case?

12 Q Yes.

13 A No.

14 Q Did you ever talk to anybody at Dixie
15 Elixirs Company?

16 A I've met Trip.

17 Q Trip Keber?

18 A Right. At some marijuana expo.

19 Q When was that conference, did you
20 say?

21 A You know, they happen every six
22 months, but it was several years ago I met him.

23 Q Do you know, say, as a reference
24 point, October of 2012. When did you meet Trip
25 Keber in relation to that date?

1 CINDY ORSER

2 A Oh. It would have been 2015. Around
3 2015.

4 Q You told me the circumstances. Was
5 it just a passing conversation, was it technical?

6 A No. So companies that have refined
7 their formulations and have branded products were
8 coming to Nevada hoping to license their product
9 to someone who held a license to, that would be
10 able to manufacture it.

11 Q Did he come to you for that purpose?

12 A He did not. One of our clients was
13 in talks with them. So that's the occasion upon
14 how I met him.

15 Q Did anything go forward from there?

16 A No.

17 Q Do you know why not?

18 A In fact, it could have gone forward,
19 because there's a lot of clients that jump ship
20 because another lab will open and give them
21 cheaper testing. I think we just lost touch with
22 that project.

23 Q In that conversation that you had
24 with him, if I can go back a question, it was only
25 one conversation; correct?

1 CINDY ORSER

2 A Yes.

3 Q Did you discuss specifically THC
4 content --

5 A No.

6 Q -- in any Dixie product?

7 A No.

8 Q Other than Trip Keber, have you ever
9 talked to anybody from the Dixie companies?

10 A I know an individual who used to work
11 for Dixie who now runs a Hemp farm in Colorado.

12 Q Okay. Do you know that name?

13 A Yes.

14 Q Who is that?

15 A Steven Turetsky.

16 Q What was his position at Dixie; do
17 you know?

18 A I think he did a lot. Like, you
19 know, whatever needed to be done, he did.

20 Q Does that mean on the scientific end,
21 or does that mean somewhere else?

22 A I mean he's not a Ph.D. or anything.
23 I don't believe he was doing formulation work. I
24 think he was doing more business development.

25 Q How do you spell his last name, if

1 CINDY ORSER

2 you know?

3 A I do. T-U-R-E-T-S-K-Y.

4 Q Did you discuss anything about Dixie
5 products with him?

6 A No.

7 Q Other than him, anybody else at the
8 Dixie companies?

9 A No.

10 Q Same question as to Medical
11 Marijuana, have you ever had a conversation with
12 anybody about Medical Marijuana?

13 A No.

14 Q As you sit here today, do you know
15 why THC is a Schedule 1 drug? Substance. Excuse
16 me.

17 MR. BORON: Objection as to
18 form.

19 MR. SHEPS: I join in that.

20 A No, I don't know.

21 Q Are there adverse effects of THC on
22 the body, to your knowledge?

23 A That's awfully broad.

24 Q Well, in your article, again under
25 the heading of major plant cannabinoids, if you

1 CINDY ORSER

2 look at the second paragraph starting with
3 Cannabinol, CBD, you say in the second line that
4 CBD helps our bodies. I should say helps our
5 bodies -- I'm paraphrasing. Helps our bodies
6 moderate some of the adverse effects of THC;
7 correct?

8 A Correct.

9 Q So are there adverse affects of THC,
10 generally speaking?

11 MR. BORON: Objection as to
12 form.

13 A The ones I've listed here.

14 Q So there are. Do you have an
15 opinion as to why -- that's why THC is a
16 controlled 1 substance?

17 MR. SHEPS: Objection.

18 Q Controlled substance, Schedule 1?

19 MR. BORON: Objection as to
20 form.

21 A I doubt it.

22 Q As you sit here today, you don't know
23 why THC is a Schedule 1?

24 A Well, there's stories about why. But
25 from a legal standpoint, I can't comment. I'm not

1 CINDY ORSER

2 a lawyer.

3 Q Well, from a scientific standpoint,
4 can you tell us why THC would be something that
5 the Federal Government feels should be regulated?

6 MR. SHEPS: Objection.

7 MR. BORON: Objection as to
8 form.

9 A I think it's political.

10 Q When you say that, do you mean that
11 some sections of the society simply don't like it
12 and some do?

13 A Correct.

14 Q Do you know who that would be?

15 MR. SHEPS: Objection.

16 Q Who, in your view, are segments of
17 society that don't like the existence of THC for
18 human consumption?

19 MR. SHEPS: Objection.

20 MR. BORON: Objection as to
21 form.

22 A Jeff Sessions.

23 Q How about police as a general matter,
24 do you have the opinion that police don't
25 support --

1 CINDY ORSER

2 A You know --

3 MR. BORON: Objection.

4 Let him finish. Remember, he
5 has to get to the end of every
6 question, Dr. Orser. Otherwise we're
7 going to have a record that nobody is
8 going to be able to make any sense of
9 at the end.

10 Q Do you have the opinion that police
11 don't support having THC in products for human
12 consumption?

13 MR. SHEPS: Objection as to
14 form.

15 A I'm sure some police aren't in favor
16 of it.

17 Q What is a terpene in your article?

18 A Well terpenes are another class of
19 molecules that the cannabis plant makes. And
20 technically, cannabinoids are phenolic terpenes.
21 So terpenes also provide physiological effects in
22 biological systems. Most of what we know comes
23 from animal studies.

24 Q And under the paragraph of -- still
25 on page 9 under the heading Important Message

1 CINDY ORSER

2 About Dosages, do you see that paragraph?

3 A Yes.

4 Q In the middle of that paragraph, you
5 wrote: Until recently, the focus on potency has
6 been on THC levels. The sentence continues.

7 Can you explain that statement, what
8 the focus on potency -- I assume you mean testing
9 has been on THC levels?

10 MR. BORON: Objection.

11 Q But you tell me. What did you mean
12 when you wrote that? Do you understand that?

13 A No. The value placed on a cannabis
14 product has focused on the THC levels, and that's
15 slowly changing as people become better educated
16 about the contributing effects of other
17 cannabinoids in terpenes.

18 Q So why has the focus been on THC
19 levels?

20 A Lack of education. It's a term
21 everyone knows.

22 Q Could you explain then the chart at
23 the bottom of page 9 which is a table. It's table
24 1, and the heading is Edibles THC Dosage Rules of
25 Thumb.

1 CINDY ORSER

2 Can you walk us through what that
3 means to -- what information does that mean to
4 convey specifically?

5 MR. BORON: Objection as to
6 form.

7 A People who are new to using cannabis
8 as a medical product often are confused about how
9 much they should take. And the correct term would
10 be titration, not dosage. So this was just
11 intended to provide some level of guidance.

12 Q Level of guidance as to what, as to
13 treatment of certain conditions, or what?

14 A No. Based on your experience with
15 using cannabis, how much of a product you should
16 take. So 2 milligrams would be a starting dose
17 for someone.

18 Q You stated in your report you're not
19 an MD, you're not a doctor; correct?

20 A Right.

21 Q Why were you recommending dosages of
22 THC here?

23 A Because I was asked to include that
24 in the article.

25 Q That table has to do with edibles;

1 CINDY ORSER

2 correct?

3 A Correct.

4 Q When you defined it there, did you
5 mean the formulated product?

6 A An edible, yes.

7 Q As opposed to the marijuana
8 cigarette?

9 A Correct.

10 Q If you flip to page 10 of that
11 article, in the -- it's on -- page 10 looks like a
12 list of definitions, right, and you see under
13 tinctures, right -- tinctures in your article here
14 are administered sublingually; correct? Do you
15 see that?

16 A Yes.

17 Q What does that mean?

18 A Putting it under your tongue.

19 Q Is taking a tincture, you know,
20 sublingually, is that a better way to take a
21 Medical Marijuana product as opposed to say
22 smoking a marijuana cigarette --

23 MR. BORON: Objection as to
24 form.

25 Q -- in your opinion?

1 CINDY ORSER

2 A In my opinion, yes.

3 Q So why is it better to take something
4 sublingually?

5 MR. BORON: Objection as to
6 form.

7 A Well, you know, combustion of any
8 material produces a range of compounds that can be
9 harmful. So avoiding smoking in general is a good
10 idea. Sublingually there's just lots of blood
11 vessels under your tongue, so if you can bypass
12 the enteric system, you get more product into your
13 bloodstream sooner.

14 Q More bang for the buck?

15 MR. BORON: Objection as to
16 form.

17 A Yes.

18 Q And with respect to page 11 under the
19 heading Cannabis Product Labeling, do you see that
20 there?

21 A Yes.

22 Q You state that medical cannabis
23 products sold in Nevada are required to have a
24 label that at a minimum the following cannabinoid
25 test results presented as a percentage of the

1 CINDY ORSER

2 weight: and you have there THC, CBD, THCA and CBN.

3 Do you see that there?

4 A Yes.

5 Q That is something specific to Nevada;
6 correct?

7 A Correct.

8 Q Are medical cannabis products sold
9 outside of Nevada supposed to have a label as to
10 THC?

11 MR. SHEPS: Objection.

12 A It depends on the state.

13 Q So it doesn't apply to every state;
14 is that correct?

15 A Correct.

16 Q Only certain states follow their own
17 labeling laws; is that true?

18 MR. SHEPS: Objection.

19 A Each state has their own rules.

20 Q As to labeling in particular?

21 A I'm not totally familiar with every
22 cannabis complicit state's labeling laws.

23 Q Are you familiar with a federal
24 labeling law?

25 A For?

1 CINDY ORSER

2 Q For THC content.

3 A No.

4 Q Is there one at all?

5 A I'm not aware of one.

6 Q Are you familiar with the labeling as
7 to controlled substances generally under Schedule
8 1?

9 A No.

10 Q The last paragraph of that article
11 says that you're distinguishing what -- here, I'm
12 paraphrasing, the acidic form or Delta-9-THC.

13 Can you tell us what is Delta-9-THC?

14 A So Delta-9-THC is the product that's
15 formed within THCA is heated. It's called
16 decarboxylation.

17 Q That's like in smoking a cigarette;
18 right?

19 A Correct.

20 Q So in the formulated products does --
21 is THC heated in that process, to your knowledge?

22 A Normally, but not always.

23 Q We can put that aside. Thank you.

24 Are you aware generally of the
25 process by which the Dixie formulated product was

1 CINDY ORSER

2 made?

3 MR. BORON: Objection as to
4 form.

5 MR. SHEPS: I join in that
6 objection.

7 A I never --

8 Q The Dixie Dew Drop -- Dixie Elixir
9 product we're alleging in this case.

10 A I've never seen the specification.

11 Q So you're not aware of how Dixie or
12 other companies make -- take hemp and make a
13 formulated product?

14 MR. SHEPS: Objection.

15 A I don't specifically know how Dixie
16 did it, but I certainly know how other companies
17 do it.

18 Q So can you tell me generally what you
19 know about other companies and how they turn a
20 hemp product into a product like a tincture here?

21 A There's an extraction step, so the
22 most simplistic way is you take dried hemp and
23 extract it with some solvent like ethanol. And
24 then after it sits there for a while, you sieve
25 out the gross plant material. So then you're left

1 CINDY ORSER

2 with the tincture, the ethanol extract.

3 Q That's called an extraction process
4 for hemp?

5 A That's the most simplistic. You can
6 also use pressurized CO2, you can use propane,
7 butane.

8 Q Okay. In that net product which you
9 said was --

10 A It's an extract.

11 Q -- an extract, okay, is there further
12 sort of refinement that goes from there, or is
13 that just put in the bottle? Is what you just
14 described simply put in a bottle after that
15 process?

16 MR. BORON: Objection as to
17 form.

18 A One could put it in a bottle and call
19 it a tincture, or there could be additional
20 distillation steps to further concentrate.

21 Q Further concentrate, you said. What
22 about is there a process at that stage, at the
23 first extraction stage that you just described,
24 where, you know, the content of that product is
25 analyzed, for instance, for THC or CBD?

1 CINDY ORSER

2 A It should be analyzed, otherwise you
3 don't know how much is in there.

4 Q Right. So at that point in the
5 refinement -- is it fair to say it's a refinement
6 process, formulating process? What should I call
7 it?

8 A I think a refinement is fine.

9 Q So at the point where, for instance,
10 THC would be identified in that net product that
11 you just testified to, would there then be a
12 removal of the THC content before it goes to final
13 consumable product?

14 A Not normally.

15 Q Whatever is in there will be left in
16 there before it's put into the market; is that
17 correct?

18 MR. SHEPS: Objection.

19 MR. BORON: Objection as to
20 form.

21 Q Is there a process by which THC
22 specifically can be removed from a refined hemp
23 product?

24 A It could be through distillation
25 where you separate the cannabinoids.

1 CINDY ORSER

2 Q And in those other companies, other
3 than Dixie that you mentioned, does that process
4 happen where it's further distilled?

5 A Further distillation absolutely
6 happens. In fact, yes, that's where the industry
7 is going.

8 Q Does that distillation mean removal
9 of THC?

10 A Yes. You end up with 99 percent pure
11 product.

12 Q What is that product in the end?

13 A CBD.

14 Q So then the question is what is the
15 purpose of removing the THC from the product?

16 A It's not just the THC. It's the
17 other -- this plant also has waxes. There's lots
18 of things you would like to remove.

19 Q Almost like impurities; correct?

20 A It like chlorophyll.

21 Q Things that are not exactly healthy
22 for people to ingest; right?

23 MR. SHEPS: Objection.

24 A If you're making a medical product,
25 you want to have specifications, so it has to be

1 CINDY ORSER

2 reproducible. So you have an SP of how you make
3 it, what are the steps.

4 Q Okay. But my question is simply as
5 to THC. Going backwards, the distillation process
6 would want to take out say wax, as you just said,
7 correct, maybe dead bugs?

8 A No.

9 Q Or other plant things --

10 A Other plant compounds.

11 Q Other plant compounds.

12 A Or to get rid of the solvents.

13 Unfortunately you're concentrating on pesticides.

14 Q But only with respect to THC, what
15 would be the reason why that company, those other
16 companies you mentioned, would want to take out
17 the THC in that process leaving the 99 percent CBD
18 in there?

19 MR. BORON: Objection as to
20 form.

21 MR. SHEPS: I join in that.

22 Q Do you understand what I asked?

23 A I do. Perhaps they wanted to be able
24 to say there's no THC in it.

25 Q Do you know what other companies

1 CINDY ORSER

2 other than Dixie that you were talking about that
3 would take a hemp product and turn it into a
4 formulated product?

5 A Yes.

6 Q Can you give me some names?

7 A Notis, N-O-T-I-S. It's a public
8 company. There's Silver State in Nevada.
9 Essence, Euphoria. There's tons of companies that
10 do that.

11 Q In your opinion, are those people
12 competitors with the Dixie company?

13 A Yes, I suppose they are. Elixinol is
14 a big one. It's an international CBD company.

15 Q What has been your function with
16 those companies? Has there been any interaction
17 with those companies that take industrial hemp and
18 refine it?

19 A Some of them we do test their final
20 product for them because they want a C of A,
21 Certificate of Analysis.

22 Q What is the purpose of a company
23 coming to you and asking you for a Certificate of
24 Analysis?

25 A Because they're selling wholesale and

1 CINDY ORSER

2 they want to be able to represent what their
3 product is. Mainly they're concerned about any
4 contaminants. So we screen for pesticides, heavy
5 metals, residual solvents, microbials.

6 Q But you don't screen for things like
7 THC?

8 A Of course we do.

9 Q And CBD contents as well; correct?

10 A Yes. 11 cannabinoids.

11 Q 11 cannabinoids. Dixie never asked
12 you though to do that in the past?

13 A No.

14 Q This case is your first experience
15 with Dixie; is it not?

16 MR. BORON: Objection as to
17 form.

18 A My first legal experience with Dixie.
19 I was aware of their products in Colorado.

20 Q Right. But being aware of it, you've
21 never spoken to anybody or been retained by Dixie
22 for anything?

23 A No. No.

24 Q Please, if you could take a look at
25 an article that I'm putting in front of you known

1 CINDY ORSER

2 as Orser B.

3 Can you just take a moment to read
4 that article.

5 (At this time, a brief recess
6 was taken.)

7 CONTINUED EXAMINATION

8 BY MR. BENJAMIN:

9 Q If you can take a look at what's been
10 marked Orser B.

11 MR. SHEPS: For the record, it
12 appears to be an article published in
13 a publication entitled
14 O'Shaughnessy's winter/spring, 2013.
15 It looks like page 25, article or
16 publication entitled Project CBD
17 Analysis, Medical Marijuana, Inc.
18 pitching CBD products by Martin A.
19 Lee.

20 Q Right. Have you had a chance to look
21 at that article?

22 A Yes.

23 Q Dr. Orser, are you familiar with
24 O'Shaughnessy's publication?

25 A I'm aware that this is a blog that

1 CINDY ORSER

2 goes out. I don't know if it's actually -- I've
3 never seen a magazine named that, but I know of
4 O'Shaughnessy.

5 Q How about BeyondTHC.com, have you
6 ever heard of that?

7 A No.

8 Q In this article, which is purported
9 to be in the winter/spring of 2013, do you see
10 that date there?

11 A Yes.

12 Q The third paragraph down it says: In
13 an October 2nd, 2012 press release, Medical
14 Marijuana, Inc. estimated that CBD and wellness
15 industry to be a \$5 billion market. Then it goes
16 on to say Dixie Elixirs, MJNA, which is the ticker
17 symbol I guess for Medical Marijuana, referring to
18 Medical Marijuana by its ticker symbol, MJNA, that
19 their de facto subsidiary is the first business to
20 mass market CBD as a "wellness product."

21 Do you see that article?

22 A Yes.

23 Q Do you know what the market is for
24 CBD wellness products?

25 MR. BORON: Objection as to

1 CINDY ORSER

2 form.

3 MR. SHEPS: Objection.

4 Q Today?

5 A No.

6 Q Do you know the relationship between
7 Dixie Elixirs, a company known as Dixie Elixirs,
8 and a company known as Red Dice Holdings, who is
9 another defendant in this case?

10 A No.

11 Q You know who Trip Keber is. That you
12 stated before; right?

13 A Yes.

14 Q Do you see the statement that says
15 the legal status of CBD is somewhat muddled.

16 Do you see that?

17 A Yes.

18 Q On the first column it says: The
19 arrangement between Dixie and Red Dice is
20 structured so that Medical Marijuana, Inc. is able
21 to utilize only CBD -- only the CBD aspect of the
22 licensing agreement while MJNA, referring to
23 Medical Marijuana, Inc., eschews responsibility
24 for Dixie's THC products.

25 Do you see that?

1 CINDY ORSER

2 A Yes.

3 Q Do you have an understanding of why
4 Medical Marijuana would avoid responsibility for
5 the THC products of Dixie?

6 MR. BORON: Objection as to
7 form.

8 MR. SHEPS: Objection.

9 A I don't know.

10 MR. BORON: The question is
11 suggesting something that's not in
12 the quote that you gave.

13 MR. BENJAMIN: I think eschews
14 means avoid. So I'm simply quoting
15 the article.

16 Q But do you have any idea about a
17 licensing agreement between the two companies?

18 A No.

19 Q Now if you could skip over to the
20 second column. The third paragraph down starts
21 with Medical Marijuana, Inc. says.

22 Do you see that?

23 A Yes.

24 Q It says that it circumvents the
25 federal prohibition by extracting CBD from

1 CINDY ORSER

2 industrial hemp, not from marijuana, that is grown
3 outside of the United States in five different
4 countries. MJNA, in other words Medical
5 Marijuana, won't disclose which countries.

6 A It actually says MLNA. I think
7 that's a typo.

8 Q That could be.

9 MR. BORON: I don't necessarily
10 think it's fair for your questions to
11 presume that Medical Marijuana, Inc.
12 and MGNA or MLNA are the same thing,
13 Jeff. Those names appear in the
14 sentence more than once in this
15 article. It's unlikely that the
16 author is referencing to the same
17 entity in two different ways within
18 the same sentence.

19 MR. BENJAMIN: In the second
20 paragraph, counsel --

21 MR. SHEPS: The second paragraph
22 of what?

23 MR. BENJAMIN: The second
24 paragraph of this article I read
25 that -- it states that Dixie X, et

1 CINDY ORSER

2 cetera, is the umbrella of Medical
3 Marijuana, Inc. and in paresthesia
4 says MJNA.

5 MR. SHEPS: It says now operates
6 under the umbrella of Medical
7 Marijuana.

8 MR. BENJAMIN: Okay. Right.
9 That's what it says, but it is
10 referring to Medical Marijuana, Inc.
11 as MJNA. If that is wrong and if you
12 know that to be wrong, then I'm not
13 going to -- I'm not verifying this
14 article. I'm just simply asking this
15 witness as to what her knowledge is.

16 MR. BORON: What I'm saying is I
17 don't know it to be right or wrong,
18 and I don't know whether you know it
19 to be right or wrong. I'm suggesting
20 that -- I don't think it's
21 appropriate for your questions to
22 interpret the acronym MJNA as meaning
23 Medical Marijuana, Incorporated.

24 I think at best, all that MJNA
25 is is an acronym used by some stock

1 CINDY ORSER

2 market somewhere to refer to the
3 stock of Medical Marijuana, Inc.

4 MR. BENJAMIN: I'm not sure I
5 understand the difference that you're
6 stating an objection. But for the
7 purposes of this question, Medical
8 Marijuana, Inc. is stated
9 specifically in this paragraph, at
10 least at the beginning.

11 MR. BORON: In the section that
12 you just read about the licensing
13 agreement, the article says MJNA
14 eschews responsibility for Dixie's
15 THC products. MJNA is just a stock
16 symbol, so the article makes no
17 sense.

18 MR. BENJAMIN: Well, she
19 answered I don't know, so I think
20 that kind of took care of everything.

21 MR. BORON: Probably right, but
22 do you see my point?

23 MR. BENJAMIN: I understand.
24 I'm not trying to mischaracterize or
25 to say that this article has it

1 CINDY ORSER

2 right.

3 But I will ask more specifically
4 if Medical Marijuana is making these
5 statements.

6 Q So going back to that paragraph. It
7 simple says that it circumvents. You see that
8 paragraph there; right?

9 A Yes.

10 MR. BORON: Can you just refresh
11 us on which paragraph you're
12 referring to?

13 MR. BENJAMIN: It starts with
14 Medical Marijuana, Inc. says it
15 circumvents.

16 MR. BORON: That's in the second
17 column of the article.

18 MR. BENJAMIN: Second column,
19 three paragraphs. It's like the
20 third paragraph, yes. It starts with
21 Medical Marijuana, Inc.

22 MR. BORON: Thanks.

23 MR. BENJAMIN: Sure.

24 Q Do you know why a company has to
25 import industrial hemp from outside the United

1 CINDY ORSER

2 States?

3 A Yes.

4 Q Why is that?

5 A This article was written before the
6 Farm Bill of 2014, which then allowed for the
7 cultivation of industrial hemp in cannabis
8 complicity states.

9 Q Okay. So that would be a more recent
10 law, the Farm Bill of 2014, that allowed for the
11 use of domestic industrial hemp; correct? Is that
12 what you're testifying to?

13 MR. SHEPS: Sorry. Could you
14 just read back the last question and
15 answer.

16 (The requested portion of the
17 record was read back by the
18 reporter.)

19 Q So in 2014, that statement would not
20 be correct as to those states. That's correct;
21 right?

22 MR. BORON: Objection as to
23 form.

24 MR. SHEPS: I join in that
25 objection.

1 CINDY ORSER

2 A Correct. I mean to my knowledge.

3 Q I understand. But back then in 2012,
4 a way a company got industrial hemp to their --
5 into their possession was by importing it from
6 another country; correct?

7 MR. SHEPS: Objection.

8 MR. BORON: Objection as to
9 form.

10 Q Do you understand the question?

11 A Yes. That's my understanding.

12 Q Then the next paragraph says: The
13 initial extraction is performed by another Medical
14 Marijuana, Inc. subsidiary, and it says
15 phytosphere, and it goes on to say, which provides
16 raw hemp paste to Dixie X and its sister firms.

17 Let's start there. Was that the
18 extraction process that you referred to when you
19 were describing those other firms that you had
20 been in contact with?

21 MR. BORON: Objection as to
22 form.

23 A Of course I have no knowledge of how
24 phytosphere did their extraction.

25 Q But the extraction process that you

1 CINDY ORSER

2 described to me, that is -- that produces a raw
3 hemp paste; isn't that true?

4 A Right.

5 Q So the next sentence says, like other
6 industrial hemp products legally imported into the
7 United States, this hemp paste apparently contains
8 a minuscule amount of THC; hence it's legal to
9 bring it into the United States according to Dixie
10 officials.

11 Do you see that part?

12 A Yes.

13 Q So the extracted hemp paste -- to
14 understand this portion, I want to make sure this
15 is correct in your knowledge, if you can testify
16 to it.

17 The hemp paste that's extracted from
18 the plant, does it typically contain a miniscule
19 amount of THC?

20 MR. BORON: Objection as to
21 form.

22 Q To your knowledge.

23 A Again, it depends upon the genetics
24 of the hemp strain that is being grown.

25 Q Again, the level of THC that is

1 CINDY ORSER

2 allowed is what?

3 MR. SHEPS: Objection.

4 A Less than .3 percent.

5 Q Where is that standard from?

6 A Before 2014, I'm not sure.

7 Q Less than .3 percent only came to be
8 a requirement post 2014?

9 MR. SHEPS: Objection.

10 A I'm associating it with the Farm
11 Bill, but that might not be accurate.

12 Q Do you know the original source of
13 that .3 threshold that you mentioned?

14 A I don't.

15 Q What does that .3 threshold apply to
16 exactly, levels of what in what?

17 A .3 percent of THC.

18 Q In what?

19 A In the raw -- the raw plant, the
20 extracted plant. Whatever the hemp product is.

21 Q Well, is it the raw hemp plant, or is
22 it some other product?

23 A Well, people aren't going to import
24 raw hemp. They're going to be importing extract.

25 Q Well, didn't this paragraph suggest

1 CINDY ORSER

2 that that's what they had to do?

3 A We don't know where phytosphere is.

4 We don't know if it's a U.S.

5 Q I understand that.

6 But back then, according to this
7 article, companies did import the raw hemp plant.
8 Is that not true?

9 A I don't know.

10 Q They didn't import extracted product,
11 correct, to your knowledge?

12 A I don't know. I mean it doesn't seem
13 feasible to be importing a product that looks like
14 hey. It would be very expensive.

15 Q But your testimony is that the
16 .3 percent applies to the raw hemp. Is that what
17 your testimony was?

18 A I think it's a spectrum of hemp-based
19 products. The threshold is .3 percent.

20 Q And you don't know the source of that
21 .3 percent as you sit here today; correct?

22 A As I said before, I associate it with
23 the 2014 Farm Bill.

24 Q But you do not know whether it was in
25 effect prior to 2014?

1 CINDY ORSER

2 A I do not know.

3 Q Thank you. If you look at the last
4 column, halfway down the column you'll see a
5 paragraph that starts -- actually it's the second
6 paragraph, the second full paragraph, whereas
7 Medical Marijuana, Inc.

8 Do you see that?

9 A Yes.

10 Q I'm reading from the article.
11 Whereas Medical Marijuana, Inc.'s press releases
12 initially included sweeping claims about CBD's
13 therapeutic efficacy, the company has recently
14 shifted it's rhetorical gears as part of a
15 re-branding makeover. Hence forth, Dixie's CBD
16 products will be marked strictly as "hemp oil"
17 dietary supplements and cosmetics rather than
18 curatives in order to comply with FDA rules. Then
19 it quotes, you see the quote there: "We had a
20 little bit of a misstep in our initial launch
21 because of our backgrounds in medicinal cannabis.

22 It references after that Lungsford
23 acknowledged. Early in the article I think it was
24 referring to Kristy Lunsford. She goes on to say:
25 We didn't understand what claims were appropriate.

1 CINDY ORSER

2 Do you know what missteps at their
3 initial launch for the Dixie CBD products were
4 that she's referring to there?

5 MR. BORON: Objection.

6 A I do not.

7 Q Do you know if Medical Marijuana made
8 certain medicinal cannabis claims that were
9 unsupported?

10 A I do not.

11 Q Have you ever observed, as a general
12 matter, what the Dixie Elixir product promised in
13 terms of its medicinal value?

14 MR. BORON: Objection as to
15 form.

16 MR. SHEPS: I join in that
17 objection.

18 A No.

19 Q The last piece of your attention I
20 would like to go to, please, is the last paragraph
21 which says as we go to press. Do you see as we go
22 to press?

23 A Yes.

24 Q As we go to press, we find this
25 message from Dixie Botanicals on its websites, and

1 CINDY ORSER

2 it quotes, we have revised our labels for our
3 small containers, and these small labels do not
4 have enough room for the supplemental facts box.
5 Do you see that part?

6 A Mm-hmm.

7 Q Are you, first of all, aware of what
8 was on the Dixie Botanicals labels?

9 MR. BORON: Objection as to
10 form.

11 A This is the only thing I know is
12 there was a photo of the back side, I guess, of
13 this dew drops where it said this product contains
14 CBD and other cannabinoids.

15 Q Yes. And I'm sorry. I don't want
16 you to guess. Let me please give you --

17 MR. BENJAMIN: Does counsel have
18 an objection to me taking exhibits
19 out of marked order, or should we
20 rename them? I guess it doesn't
21 really matter; does it?

22 MR. SHEPS: I don't have any
23 objection. Call it whatever you
24 labeled it.

25 MR. BENJAMIN: We labeled this

1 CINDY ORSER

2 Exhibit Orser G.

3 Q If you could look at that in
4 conjunction with what we just read. If you could
5 just take a moment to look at that with him.

6 MR. SHEPS: Off the record.

7 (Discussion held off the
8 record.)

9 Q I'm sorry, but I have to take out of
10 order what's been marked Exhibits Orser G and H.
11 For purposes of some quick questioning on the
12 label, there are two photos that were also
13 exhibits in prior depositions. But if you can
14 take a look at those, please, and just review
15 them.

16 Have you had a chance to look at
17 those labels?

18 A Yes.

19 Q If you can look at those labels, you
20 had referenced that there was CBD extract, I
21 believe; correct, from your memory?

22 MR. BORON: Objection as to
23 form.

24 A I believe what I said was that the
25 product contained CBD and other cannabinoids.

1 CINDY ORSER

2 That's what I remember seeing.

3 Q Does this label, to your knowledge,
4 indicate that?

5 A Yes.

6 Q You're referencing exhibit?

7 A G.

8 Q G. Okay. So you're referencing
9 specifically to CBD, and it looks like there's an
10 asterisk --

11 A Right.

12 Q -- extract derived from medicinal
13 hemp; right?

14 A Yes.

15 Q Okay.

16 MR. SHEPS: Counsel, do you have
17 an extra copy.

18 MR. BENJAMIN: Yes. Sure.

19 Q When it says CBD, do you know what
20 the asterisk refers to on that label?

21 A The cannabidiol.

22 Q Okay. I'm going to submit to you
23 that these were pictures of the bottle that were
24 provided by the plaintiff in this case, Douglas
25 Horn --

1 CINDY ORSER

2 A Okay.

3 Q -- as to the product that he took.

4 A So is this the same bottle? There
5 are two sides of the bottle?

6 Q I believe that this is two sides of
7 the label that's on the bottle, yes.

8 A Right.

9 Q Do you know if, as it says in the
10 article, if Dixie Botanicals revised their labels
11 from what you see in front of you to something
12 else?

13 MR. SHEPS: Objection.

14 MR. BORON: Objection as to
15 form.

16 MR. SHEPS: The article?

17 MR. BENJAMIN: Right. We read
18 the last paragraph of the article.

19 Q So do you know, as it says there, if
20 they revised their labels?

21 MR. BORON: Objection as to
22 form.

23 A No, I can't. I don't have anything
24 to compare it to.

25 Q Looking at those labels, would it

1 CINDY ORSER

2 be -- in your opinion, would it be required to
3 disclose THC content on a label for a Medical
4 Marijuana product?

5 A Yes.

6 Q Have you seen in the past a label
7 that said something to the effect that it contains
8 some level of THC?

9 MR. SHEPS: Objection.

10 MR. BORON: Objection.

11 A On a CBD product?

12 Q On a CBD product, sure.

13 A I've seen certificates of analysis,
14 so it's not a label on a bottle.

15 Q I'm only asking as to a label right
16 now.

17 A No.

18 Q So you have not seen that.

19 Would it be appropriate to disclose
20 the THC level on a label --

21 MR. BORON: Objection as to
22 form.

23 Q -- if a product had THC in it?

24 MR. BORON: Objection to the
25 form.

1 CINDY ORSER

2 MR. SHEPS: Objection.

3 A This is 2012, so I suspect they were
4 complying with --

5 MR. SHEPS: Don't guess.

6 THE WITNESS: Okay.

7 A It says other cannabinoids.

8 Q Would other cannabinoids include THC?

9 A It could.

10 Q Would you agree with me that a
11 consumer would not know what other cannabinoids
12 are; right?

13 MR. SHEPS: Objection.

14 MR. BORON: Objection as to
15 form.

16 A No, I can't agree with that.

17 Q A consumer would know what other
18 cannabinoids are, generally speaking?

19 MR. BORON: Objection as to
20 form.

21 A The term cannabinoid would include
22 THC.

23 Q When it says cannabidiol, is that
24 what it's referring to as to other cannabinoids?

25 A No. The asterisk is at the end of

1 CINDY ORSER

2 CBD.

3 Q I'm sorry. You're right.

4 That's what CBD is; right?

5 A Right.

6 Q Have you ever seen a Schedule 1
7 warning on any label with a formulated Medical
8 Marijuana product?

9 A No.

10 Q So is that not done in the industry,
11 it's not put on a label?

12 MR. BORON: Objection as to
13 form.

14 A No, not to my knowledge.

15 MR. BENJAMIN: We can put that
16 aside for now.

17 Let's break for lunch.

18 (After a luncheon recess was
19 taken, the following was had:)

20

21 A F T E R N O O N S E S S I O N

22 CONTINUED EXAMINATION

23 BY MR. BENJAMIN:

24 Q We're back on the record.

25 Dr. Orser, do you remember giving a

1 CINDY ORSER

2 YouTube interview on September 25, 2015 with Todd
3 Denkin?

4 A I remember giving an interview. I
5 didn't know it ended up on YouTube.

6 Q But as you sit here today, you did
7 sit down with Todd Denkin and answer questions
8 with him?

9 A Oh, yeah.

10 Q What was the purpose of that
11 interview?

12 A It was with the Natural Marijuana
13 News, which is a sister company of Digipath.

14 Q Was their relationship to Digipath;
15 are they marketing?

16 A Right. It's, you know, news,
17 marketing, communication.

18 Q So was your interview made
19 specifically for marketing purposes or promotional
20 purposes?

21 A Largely. But it was also to provide
22 some information to people who listened to the TNM
23 news.

24 Q In that interview you describe the
25 consulting business as mercenary science. Do you

1 CINDY ORSER

2 remember describing the consulting service as
3 mercenary science?

4 A I do now that you've said that.

5 Q What did you mean by that?

6 A Well, I mean I've been practicing
7 science for a long time, and so there was a big
8 need within the cannabis industry for people who
9 understood science to come forward and try to
10 explain various aspects.

11 Q Is that because cannabis testing is
12 relatively new?

13 A Yes.

14 Q And certainly in September of 2015;
15 correct?

16 A Right.

17 Q As part of that interview, and just
18 if you can testify as to what you remember, but
19 I'm going to tell you what you said in that
20 interview. Tell me if you remember what it was
21 and elaborate.

22 One of the questions that Mr. Denkin
23 asked you was about edibles issues and
24 specifically edibles that were "unsanitary issues
25 with mislabeling and issues of mistesting."

1 CINDY ORSER

2 Do you remember that question at all?

3 A Not specifically, but it goes to the
4 general issue of needing standardization.

5 Q Right. So let's break it down.

6 What issues, I guess starting back
7 then when you answered that question, were there
8 as to edibles being unsanitary?

9 A That really had to do with
10 adulterants, so we're talking about pesticide
11 residue, residual solvents and microbial
12 contamination.

13 Q Those are things that you tested at
14 Digipath?

15 A Yes.

16 Q When I say edibles, let's at least
17 define for the record what an edible Medical
18 Marijuana product is.

19 Can you define that?

20 A It's the format that you ingest.

21 Q "You" meaning a general consumer?

22 A Right. A consumer. It's something
23 you eat.

24 Q Is it fair to say that it's a
25 formulated product --

1 CINDY ORSER

2 A Yes.

3 Q -- for human consumption; is that a
4 fair statement?

5 A Yes.

6 Q How about with respect to
7 mislabeling. When Mr. Denkin asked you about
8 mislabeling as to edibles, what is going on with
9 mislabeling, at least back then?

10 A Probably referring to that not all
11 testing labs are created equally, that not all
12 labs use validated protocols.

13 Q Is it the labs that put the labeling
14 on products?

15 A Well, it's the labs that provide the
16 Certificate of Analysis where the information
17 would be that the company would lift from to put
18 on the label.

19 Q So specifically then, back then what
20 were some mislabeling issues with respect to
21 edibles?

22 A Improper cannabinoid dosing.

23 Q Anything other than dosing?

24 A That and the adulterine issue.

25 Q Anything with respect to THC content

1 CINDY ORSER

2 when he asked you that question back in September
3 of 2015?

4 A Right. So that's the potency issue
5 about dosing. Usually it was an inflation of
6 numbers, so claiming something had 800 milligrams
7 when it really only had 500.

8 Q Because inflation of THC content
9 would make a customer buy the product more; is
10 that why?

11 MR. BORON: Objection as to
12 form.

13 A In general it leads to higher retail
14 price.

15 Q Were there mislabeling issues with
16 deflation of THC content on labels?

17 A Not in my experience.

18 Q So prior to September, 2015, you had
19 not experienced mislabeling with respect to
20 deflation, specifically of THC content?

21 A No.

22 Q How about to today, fast forward,
23 between over the last two years, have you seen
24 mislabeling from a deflation perspective or
25 reduction?

1 CINDY ORSER

2 A No.

3 Q What company who would be selling
4 Medical Marijuana formulated products have a
5 reason to deflate the THC content in their
6 labeling?

7 MR. BORON: Objection as to
8 form.

9 A Not that I know of.

10 Q The last issue that he brought up in
11 the question was mis-testing. What back then did
12 you mean when you said that edibles -- there were
13 edible issues as to mis-testing?

14 A Again, it refers to the contamination
15 or improper analytical methods being used to
16 arrive at a potency.

17 Q Because back then, as is the case
18 today, there's no standardization of that testing;
19 correct?

20 MR. BORON: Objection as to
21 form.

22 Q Digipath you built in 2014; correct?

23 A (Nodding)

24 Q Prior let's say in the period of time
25 that applies to this case in September, October of

1 CINDY ORSER

2 2012, what labs, in your opinion, were competent
3 to do cannabis testing and other product testing?

4 MR. SHEPS: Objection.

5 A I can't really say, because at that
6 time I wasn't embedded in the industry to have an
7 opinion.

8 Q Were you affiliated with a lab back
9 then that would have been competent or been able
10 to do valid Cannabis testing back then?

11 MR. BORON: Did you say able or
12 unable?

13 MR. BENJAMIN: I said able.

14 MR. BORON: Objection as to
15 form.

16 A Well, you know, I had ASDx
17 Biosystems. We were a diagnostic lab. We could
18 have, but we weren't licensed to do that, and we
19 weren't doing that.

20 Q In 2012 though, you don't know of any
21 particular named lab that would have been
22 competent to do that?

23 MR. BORON: Objection as to
24 form.

25 A No.

1 CINDY ORSER

2 Q Is it that you don't know of any or
3 there wasn't any?

4 MR. BORON: Objection as to
5 form.

6 A There were a handful of labs, but
7 again, because I wasn't interacting at a technical
8 level in the space, I really can't give an opinion
9 as to their competency. But there were labs.
10 There was Steep Hill in Oakland, CannLabs in
11 Denver, and the Workshop in Pasadena.

12 Q These were Colorado, California.
13 Where were those located, the ones you mentioned?

14 A CannLabs, Denver. The other two in
15 California.

16 Q Were there any of those labs outside
17 of those states that at that point held Medical
18 Marijuana to be legal?

19 A Of course. You know, California had,
20 I think, from '96 that individuals had access, but
21 it was totally unregulated. Actually until
22 January 1, it has been unregulated.

23 Q How about New York specifically, has
24 New York ever had a testing lab?

25 A My understanding is that New York

1 CINDY ORSER

2 appointed their state lab in Albany as the testing
3 lab for cannabis.

4 Q Do you know when that was?

5 A Maybe a year and a half ago.
6 Something like that.

7 Q Was that the first in New York, to
8 your knowledge?

9 A I mean to my knowledge, that's still
10 the situation here.

11 Q Digipath was not the first lab to
12 sort of focus on Cannabis testing; correct?

13 A Right.

14 Q But according to the YouTube
15 interview that you gave, Digipath was state of the
16 art in 2014; was it not?

17 A Yes.

18 Q In the YouTube interview, you further
19 stated that there needs to be a national
20 discussion as to testing.

21 A Right.

22 Q You also stated that government
23 should get its head out of the sand because, as
24 you say -- as you also said -- 50 percent, or more
25 than 50 percent of the country endorsed the use of

1 CINDY ORSER

2 Medical Marijuana.

3 So what did you mean when you said
4 that government back then, in September of 2015,
5 should get its head out of the sand?

6 A That it should no longer ignore the
7 will of the people.

8 Q Specifically, does that mean
9 rescheduling some of the Schedule 1 substances; is
10 that your position?

11 MR. BORON: Objection as to
12 form.

13 A I think that that eventually will
14 happen.

15 Q Would you support that effort?

16 A Yes.

17 Q Specifically as the THC, do you feel
18 that THC should not be a Schedule 1 drug?

19 A I think the whole plant should not be
20 a Schedule 1.

21 Q That includes THC; correct?

22 A Right.

23 Q Okay. Why? Give me a reason why you
24 feel it should not be Schedule 1.

25 MR. BORON: Objection as to

1 CINDY ORSER

2 form.

3 A There's plenty of scientific evidence
4 to support the medicinal value of this plant.

5 Q Have you lobbied Congress or any
6 local government people to reschedule anything?

7 A No.

8 Q You said in that video that Schedule
9 1, which lists the controlled substances, and I'm
10 quoting you, makes everything extremely difficult.

11 Can you elaborate on what you meant
12 when you said that in the interview?

13 A Lack of interstate transport,
14 barriers to conducting research, lack of banking
15 for the industry. Those are the big three.

16 Q Schedule 1 -- from your answer that
17 you just gave me, Schedule 1 makes it illegal to
18 transport those listed substances across state
19 lines; correct?

20 MR. BORON: Objection as to
21 form.

22 MR. SHEPS: I join.

23 A Cannabis.

24 Q Cannabis in general?

25 A Cannabis as used for Medical

1 CINDY ORSER

2 Marijuana, yes.

3 Q Not hemp?

4 A Not hemp.

5 Q Do you intend to participate in any
6 lobby functions in DC as you said in this video?

7 A I'm sorry. What did I say?

8 Q You said that the -- that you
9 looked -- strike that.

10 That because Schedule 1 made the --
11 put certain restraints on the industry, that there
12 has to be lobbying in D.C.

13 Do you remember saying that?

14 A I don't remember that.

15 Q As you sit here today, do you intend
16 to be involved in any lobbying?

17 A No, I do not.

18 Q You stated in the video also
19 something about ISO 17-025.

20 Are you familiar with that?

21 A Yes.

22 Q Can you tell me what that is?

23 A That's an international standard, ISO
24 is International Standard Organization. So for
25 example, Digipath -- I am taking them through ISO

1 CINDY ORSER

2 17-025 accreditation right now. That is now the
3 new norm that states are adopting for cannabis
4 testing labs.

5 Q Are you able to tell us generally
6 what is contained in ISO 17-025 as a requirement?

7 A Yes. It embeds a quality management
8 system that stipulates how quality testing is
9 maintained within the lab. So how many quality
10 control samples you have to run in each
11 instrument, so it's like every 15 samples has to
12 be a quality control sample, whether it's a spiked
13 matrix sample or just the reference standards.

14 And at the beginning of the day, you
15 have to calibrate your instrument with spike
16 matrix samples. At the end of the day you have to
17 calibrate and make sure that all those samples
18 that were run during that period interspersed with
19 all the quality control and that the machine
20 maintained it's calibration. That's just one
21 example.

22 Another big component of 17-025 is
23 what you do if you fall outside of your calibrated
24 compliance, and how you handle those samples and
25 how you document -- it's called out of

1 CINDY ORSER

2 specification.

3 So everything is tightly controlled.

4 Everyone has their own -- a specific job

5 description. There's a hierarchy of management.

6 It's who is responsible for what. You can't allow

7 an SOP to leave the lab. You can't even have one

8 printed. The documents are controlled. It's

9 just --

10 Q Do those things that you mentioned,

11 do those apply specifically to Cannabis testing?

12 I mean 17-025 is a general international standard?

13 A A standard for analytical testing

14 labs.

15 Q Not specifically particular to

16 cannabis testing?

17 A It is now. There is a program

18 specifically for cannabis testing labs.

19 Q As of when?

20 A As of two and a half years ago.

21 Q Is CannLabs still in existence, to

22 your knowledge?

23 A No, it's not.

24 Q Do you know what happened to it?

25 MR. BORON: Objection.

1 CINDY ORSER

2 A It closed.

3 Q It closed. Do you know when?

4 A Maybe 2014. I'm guessing. I'm
5 guessing.

6 Q Around the same time that you started
7 Digipath?

8 A Correct.

9 Q Do you know why they were closed?

10 A They made it be known that they were
11 for sale. Actually Digipath tried to buy them,
12 but then we found out Colorado has a law
13 prohibiting profit sharing with a public company
14 in the marijuana space, so Digipath couldn't buy
15 them. Someone else bought them and just shut them
16 down.

17 Q Do you know if that company maintains
18 the CannLabs records?

19 A Doubtful, but I don't know.

20 Q Is it your understanding the
21 CannLabs' records were destroyed in that sale?

22 A I don't know.

23 Q Do you know anybody at CannLabs or
24 formerly at CannLabs?

25 A I know Jennifer Murray who was the

1 CINDY ORSER

2 CEO.

3 Q Do you know where she is now?

4 A She's still in Colorado.

5 Q Do you know who she works for now?

6 A She sells jewelry.

7 Q Do you know the company that bought
8 CannLabs?

9 A I don't.

10 Q Was Jennifer Murray part of any other
11 company, to your knowledge, other than CannLabs
12 before her jewelry company?

13 A Not to my knowledge.

14 Q Okay. Now let's move on to the easy
15 stuff and your report.

16 A Okay.

17 Q If you could take a look at what's
18 been marked Orser C. Do you recognize that
19 document?

20 A Yes.

21 Q Describe just for the record what
22 that document is.

23 A It's my findings based on the
24 documents that I was provided by Messner Reeves
25 that are listed there.

1 CINDY ORSER

2 Q I'm sorry. Quickly some things I
3 forgot to ask.

4 Who retained you to provide opinions
5 in this case?

6 A Messner Reeves.

7 Q And how did Messner Reeves come to
8 find you?

9 MR. BORON: Objection as to
10 form.

11 A I was contacted by an attorney with
12 Messner Reeves in Denver.

13 Q Did they contact you directly?

14 A Yes.

15 Q What is your fee structure for the
16 time that you spent on this case?

17 A \$150 an hour.

18 Q Is that for both study and testimony,
19 or one or the other?

20 A Both.

21 Q Are those fees paid directly to you,
22 or are they paid to Big Sky?

23 A To Big Sky.

24 Q Do you have a superior at Big Sky
25 Biosystems, or are you the last?

1 CINDY ORSER

2 A I'm the only employee.

3 Q At Digipath, what is your title at
4 Digipath?

5 A Chief Science officer.

6 Q The two companies know that you're
7 here and giving testimony for this case; correct?

8 A Yes.

9 Q What percentage of time do you split
10 between Digipath and Big Sky?

11 A I would say Digipath is probably 90
12 percent of my effort.

13 Q Is your effort with Big Sky more from
14 an administrative standpoint?

15 A You know, as I mentioned before, I
16 have a few referrals. People want to know my
17 opinion.

18 Q And you give those opinions under the
19 Big Sky company --

20 A Yes.

21 Q -- as you have done here; correct?

22 A Correct.

23 Q Are you getting paid by Digipath for
24 the time you're representing Big Sky or vice
25 versa?

1 CINDY ORSER

2 A That's a little confusing. I mean
3 all of my income comes through Big Sky Biosystems.
4 It's an S corp.

5 Q Part of this case, as you may
6 understand, has to do with results from a urine
7 drug screen test from the workplace; right? You
8 understand that?

9 A Yes.

10 Q Have you ever done any work in
11 interpreting urine drug screen testings?

12 A No.

13 Q You mentioned that you did do some
14 blood test review for a judge in a case or
15 something; correct?

16 A Yes.

17 Q But in terms of a urine drug testing,
18 the answer is no; right?

19 A Right.

20 Q So as you sit here today, you don't
21 believe that you're qualified to render opinions
22 on urine drug testing; correct?

23 MR. BORON: Objection as to
24 form.

25 MR. SHEPS: Objection.

1 CINDY ORSER

2 A I don't believe I'm qualified.

3 Q Yes. Do you not believe you're
4 qualified to render opinions on urine drug
5 testing?

6 A I do believe I'm qualified.

7 Q You just mentioned that you don't
8 have any experience in your drug test results, so
9 what is the basis of your --

10 MR. BORON: Actually, she
11 testified she's never done any urine
12 sampling.

13 A It's a specimen, a sample. It could
14 be anything. It could be human blood, urine. It
15 could be hair, it could be a cannabis plant, it
16 could be an extract. They're all analytical
17 samples, and you actually use similar analytical
18 instrumentation. So it's straightforward to
19 interpret these kind of results.

20 Q So you believe the answer is you are
21 qualified to render opinions as to urine drug
22 testing results?

23 A Yes.

24 Q Thank you. Looking at your report
25 marked Orser C, the first page tells us what you

1 CINDY ORSER

2 reviewed --

3 A Yes.

4 Q -- to so support your opinions in
5 this report; correct?

6 A Yes.

7 Q Other than those things listed, was
8 there anything else that you reviewed to make your
9 opinions in this report?

10 A In addition, I did go into the
11 literature some.

12 Q I'm sorry. Literature?

13 A The literature, scientific
14 literature.

15 Q On what specifically then; can you
16 give me the source?

17 A I've looked at some of the references
18 that Dr. Graham listed.

19 Q Okay. Do you remember knowing what
20 your opinions were of the sources that he listed?

21 MR. BORON: Objection as to
22 form.

23 A It's not so much I had an opinion. I
24 just wanted to have the basis of information that
25 he was referencing.

1 CINDY ORSER

2 Q What were the topics of the
3 literature that you researched?

4 A For example, he referenced a statute
5 in Canada, and I thought that was curious. So I
6 looked at that, and I'm still not clear why that
7 was referenced.

8 Q Other than that, was there anything
9 else that you remember looking at outside of
10 what's listed in your report that you would take
11 issue with Dr. Graham's citing?

12 MR. BORON: Objection as to
13 form.

14 MR. SHEPS: Objection.

15 A I'm not taking issue again. For me
16 as a scientist, I like to have as much information
17 as possible. So if he bothered to list something,
18 I thought it was my responsibility to take a look.

19 Q Other than that industrial hemp
20 regulation from Canada, was there anything else
21 that caught your eye?

22 A Yeah. He referenced a simulated
23 study suggesting that CBD gets psychologized to
24 THC in a stimulated gastric environment. He also
25 referenced some urinalysis studies of controlled

1 CINDY ORSER

2 ingestion of THC.

3 Q With respect to the two pieces that
4 you mentioned, did you have any opinion or issue
5 with his citation of those?

6 MR. BORON: Objection as to
7 form.

8 A It led me to find other references on
9 the same topic that add some doubt as to his
10 conclusions.

11 Q Did you ever render a report in
12 response to his rebuttal report?

13 A Not to his rebuttal, no.

14 Q As you sit here today, do you have
15 those sources? Do you know what the sources are
16 that would refute what he was saying there?

17 MR. BORON: Objection as to
18 form.

19 MR. SHEPS: Objection.

20 A I have one of them on my computer.

21 Q Do you know what the name of it is?

22 A It was actually taking the office
23 aside with regard to the simulated gastric
24 environment. It was more of an opinion.

25 Q Well, now you treated that in your

1 CINDY ORSER

2 report; didn't you? You did state --

3 A Yes.

4 Q -- that THC is not psychologized as
5 you said, in a gastric environment; is that what
6 you said in the report?

7 MR. BORON: Objection as to
8 form. What she said in the report is
9 going to be in the report. It's not
10 fair to paraphrase things that are in
11 a report.

12 Q So what did you say in your report
13 with respect to the gastric environment?

14 A So it's on page 5 under item 6. So
15 even though Dr. Graham innovates that Mr. Horn
16 could have experienced conversion of CBD to THC in
17 his stomach, there's no evidence that occurred.
18 Despite Dr. Graham's reference to two publications
19 where a synthetic stomach PH environment was
20 created and molecular rearrangements were noted
21 from CBD to THC, there's no evidence from a living
22 biological system that CBD is chemically
23 transformed to THC in his stomach.

24 Q Did you have a source that supported
25 that?

1 CINDY ORSER

2 A Yes, I did. It's not here. I didn't
3 footnote it.

4 Q And you don't know it offhand as you
5 sit here today?

6 A I can't.

7 Q The appendix, let's start with the
8 appendix in your report as to the AMSL lab
9 details.

10 Do you see that appendix?

11 A Mm-hmm.

12 Q Now you did not indicate the MSL lab
13 details in your list of documents. You see that;
14 correct? You see the first page. You didn't list
15 the MSL lab results -- excuse me, lab details.

16 MR. BORON: That's not a
17 question; right?

18 MR. BENJAMIN: It is a question.

19 Q You didn't list that in the list on
20 the first page?

21 MR. BORON: I object to it if
22 it's a question.

23 MR. SHEPS: I will object as
24 well.

25 Q Do you understand the question?

1 CINDY ORSER

2 A Number 5 is the EMSL lab report.

3 Q Right. That's the laboratory report.

4 A Right.

5 Q I think you pulled Appendix A from
6 their website; is that true?

7 A Right. That's why I say these are
8 the documents I was provided. I referenced this,
9 point number 4 on page 5.

10 Q So did you do that research, the MSL
11 website, or was that provided to you?

12 A I did that.

13 Q That was not listed in your first
14 listing on the first page.

15 Did you review any other websites
16 other than the EMSL lab details?

17 A Yes. Of course.

18 Q What else?

19 A Many, many things. I went to the
20 other testing lab's website.

21 Q What other testing lab?

22 A The Clinical Reference Lab, Labcorp,
23 Quest.

24 Q And did anything that you found on
25 those websites serve as a basis for your opinion

1 CINDY ORSER

2 in this report?

3 A Well, of course.

4 Q But you did not list them in that
5 initial listing?

6 A These are the documents I was
7 provided. I didn't make a list of everything I
8 went and looked up.

9 Q All right. So other than the lab
10 websites that you went to to get the information,
11 outside of what was provided to you, was there
12 anything else that you based this -- any portion
13 of this report on?

14 A I can't give you a detailed answer.

15 Q On the second page of your report,
16 the first full paragraph says that it was -- if
17 you see there, and I'm quoting, it was federally
18 legal to import industrial hemp stalks as they
19 typically contain less than the federal guideline
20 limit for THC in imported industrial hemp, which
21 is .3 percent.

22 Do you see that part?

23 A Mm-hmm.

24 Q Okay. The hemp that was provided to
25 Dixie in this case was from the cannabis sativa L

1 CINDY ORSER

2 plant; right?

3 MR. BORON: Objection as to
4 form.

5 MR. SHEPS: Objection.

6 A I'm assuming, but I have no way of
7 knowing.

8 Q What makes you assume it was from the
9 cannabis in your plant?

10 A Because they call it hemp.

11 Q That is the Latin inform of hemp,
12 cannabis sativa L?

13 A Correct.

14 Q Now, again you don't cite any
15 specific guideline in this paragraph, but do you
16 know where that .3 percent comes from?

17 A I say here under the Controlled
18 Substances Act.

19 Q Do you know what specific provision
20 in Controlled Substances Act that .3 shows up?

21 A No. I don't have it listed.

22 Q Okay. So my question is: Does that
23 .3 percent apply to industrial hemp material, or
24 does it apply to the final process product from
25 the plant material?

1 CINDY ORSER

2 MR. BORON: Objection as to
3 form.

4 MR. SHEPS: Objection.

5 A I believe it applies to both.

6 Q Okay. So what makes you believe that
7 it applies to the final processed product?

8 MR. BORON: Objection as to
9 form.

10 A I guess from my experience of how
11 people are interpreting that and operating.

12 Q The .3 percent is a threshold based
13 on interpretation in the science field, or is it
14 something that's specifically listed in the
15 Controlled Substances Act?

16 MR. BORON: Objection as to
17 form.

18 MR. SHEPS: Objection.

19 Q Can you answer the question?

20 A I don't know.

21 Q You don't know whether the .3 percent
22 threshold applies to industrial hemp?

23 A No. That's not the question.

24 MR. SHEPS: Let him finish.

25 Q You don't know what the .3 percent

1 CINDY ORSER

2 applies to of those two products?

3 MR. BORON: Objection as to
4 form.

5 MR. SHEPS: Objection.

6 A Previously I said that my opinion is
7 it applies to both.

8 Q And so what is the basis of that
9 opinion if it's other than your experience in
10 Cannabis testing?

11 A The confusion here apparently is
12 what -- what was the guideline from 2012 to 2014
13 prior to the Farm Bill where it became clarified.

14 Q Did this .3 percent threshold exist
15 in that time frame from '12 to '14?

16 A Well, I'm assuming it did. I did not
17 download the controlled substance act and read
18 through it.

19 Q Right. But if the Controlled
20 Substances Act would have stated specifically
21 whether it applied to industrial hemp or a final
22 formulated product or both; right?

23 MR. SHEPS: Objection.

24 MR. BORON: Objection as to
25 form.

1 CINDY ORSER

2 A I can't answer that.

3 Q What does the Farm Bill of 2014 say
4 with respect to that .3 percent threshold?

5 MR. SHEPS: Objection.

6 A That was the guideline given to the
7 industry that allowed them to begin cultivating
8 industrial hemp in the U.S. and cannabis complicit
9 states.

10 Q But again, does it apply in the Farm
11 Bill now of 2014 to only industrial hemp or the
12 formulated product?

13 MR. SHEPS: Objection.

14 MR. BORON: Objection as to
15 form.

16 A I think somebody should go get a copy
17 of that bill instead of beating around the bush.

18 Q I'm asking a very specific question.

19 A I know.

20 Q You don't know whether it's stated in
21 the bill, at least the 2014 bill; is that right?

22 A I don't know.

23 Q You don't know if between 2012 and
24 2014 there was anything to indicate that the
25 .3 percent applied to both industrial hemp and a

1 CINDY ORSER

2 final formulated product?

3 MR. BORON: Objection as to
4 form.

5 MR. SHEPS: Objection.

6 A I can't answer that. Again, I need a
7 copy of the document.

8 Q When you say the .3 percent threshold
9 applies to a final processed product, that is
10 based on your experience in the field between 2012
11 and 2014?

12 A That is what people in the industry
13 were doing.

14 Q But the answer is yes; right?

15 MR. SHEPS: Objection.

16 MR. BORON: Objection as to
17 form.

18 Q I just really want a yes or no
19 answer.

20 A To what question?

21 Q Your contention that the .3 percent
22 minimum threshold of THC --

23 A It's actually maximum.

24 Q I'm sorry. You're right.

25 -- maximum threshold of THC applies

1 CINDY ORSER

2 to the final processed product, such as one that
3 is at issue in this case, is based on your
4 experience and not anything that you have seen
5 written --

6 MR. SHEPS: Objection --

7 MR. BORON: Objection as to
8 form.

9 Q -- in a bill?

10 A I know that is the guideline the
11 industry was operating under that allowed them to
12 bring hemp and hemp products across state lines
13 is -- the guideline was below .3 percent. That's
14 certainly what Colorado adopted. It's what Nevada
15 has adopted.

16 Q When you say hemp product, you mean a
17 final processed product for human consumption such
18 as the one at issue?

19 A Yes.

20 Q I mean the THC content would normally
21 differ, would it not, from industrial hemp as it
22 comes in in its raw form, as opposed to a final
23 formulated processed product. Would you agree
24 with me on that?

25 A Right.

1 CINDY ORSER

2 Q And you're saying that the same
3 standard applies, the .3 percent legal minimum --
4 excuse me -- maximum limit applies to both
5 industrial hemp and a processed product?

6 A I think that's the definition that
7 was given of hemp. That's the definition. So if
8 you're selling a product and you're labeling it
9 hemp, whether it's compacted raw material or
10 extracted material, if you're marketing it as
11 hemp, it has to be below .3 percent THC.

12 Q But that's not what the Controlled
13 Substances Act says; is it?

14 MR. BORON: Objection as to
15 form.

16 MR. SHEPS: Objection.

17 Q The Controlled Substances Act does
18 not say with respect to hallucinogenic substances
19 that .3 percent is the legal maximum? That's not
20 what it says; is it?

21 MR. SHEPS: Objection.

22 MR. BORON: Objection as to
23 form.

24 A I'm talking about the Farm Bill.

25 Q I mean I'm talking about the

1 CINDY ORSER

2 Controlled Substances Act. I want you to just
3 focus on that as the context of my question.

4 Do you know what limit the Controlled
5 Substances Act allows for THC content in a product
6 so as to fall outside of the definition of a
7 controlled substance?

8 MR. SHEPS: Objection.

9 MR. BORON: Objection as to
10 form.

11 MR. SHEPS: Controlled
12 substances as of when? In what time;
13 as compared to what?

14 MR. BENJAMIN: I'm simply asking
15 a general question about the
16 Controller Substances Act.

17 MR. SHEPS: From when?

18 MR. BENJAMIN: At any time.

19 MR. SHEPS: Then I continue my
20 objection.

21 Q Do you understand the question?

22 A I think you're trying to draw a
23 distinction.

24 MR. BORON: You don't have to
25 tell him what he's trying to do.

1 CINDY ORSER

2 Listen to the question and answer it.

3 Q The .3 percent threshold does not
4 come from the Controlled Substances Act, does it?

5 A No, because people worked. The hemp
6 was not in the dialogue when the Controlled
7 Substances Act was written, which was what, in the
8 Nixon era.

9 Q Which would have applied in 2012;
10 correct?

11 MR. BORON: Objection as to
12 form.

13 MR. SHEPS: Objection.

14 Q Yes or no?

15 A I'm not a lawyer, but I would
16 suppose.

17 Q I'm not asking you a legal question.
18 I'm asking you whether you know.

19 A I don't know and I don't have a copy
20 of it. If you would provide it, that would be
21 great.

22 Q I will. We'll get to it. But I'm
23 just simply asking you your knowledge as to what
24 you put in your report, because it's not clear
25 whether -- you have not made it clear, and I will

1 CINDY ORSER

2 tell you specifically.

3 In that first sentence, you don't
4 mention formulated products whatsoever. You only
5 mention industrial hemp as to the .3 percent
6 threshold.

7 Do you see that first sentence?

8 A I do.

9 Q So did you mean to say in that
10 sentence that the .3 percent only applies to
11 industrial hemp?

12 A No, I didn't.

13 Q Wouldn't you have included the
14 language of formulated product, if that's what the
15 .3 percent applied to?

16 MR. BORON: Objection as to
17 form.

18 MR. SHEPS: Objection.

19 Q Wouldn't you have included that
20 language?

21 MR. BORON: Objection to form.

22 MR. SHEPS: Objection.

23 A I'm not sure. I'm not sure. I would
24 have to go back to what I was thinking at the time
25 with my argument here.

1 CINDY ORSER

2 Q Does it make sense to you that the
3 .3 percent would apply to those two different
4 products, one raw and one formulated?

5 MR. SHEPS: Objection.

6 MR. BORON: Objection as to
7 form.

8 Q Can you answer that question?

9 A You have to realize that the hemp --
10 raw hemp can have a much lower level of THC than
11 0.3. This is the maximum.

12 Q I understand that. But my question
13 is does it make sense to you that there would be a
14 federal standard which you acknowledge in your
15 report, would it make sense to you that it would
16 apply to both an industrial and raw form of hemp
17 and then a formulated product later on? In other
18 words, wouldn't there be another threshold number
19 for the formulated product?

20 MR. BORON: Objection as to
21 form.

22 A Not my definition. Hemp is defined
23 as less than .3 percent.

24 Q So you're deferring to the definition
25 of --

1 CINDY ORSER

2 A Hemp.

3 Q Right. And that definition would
4 correspond to the .3.; correct?

5 MR. BORON: Objection as to
6 form.

7 MR. SHEPS: Objection.

8 A (Nodding)

9 Q Does the Farm Bill talk about final
10 processed products?

11 A I don't know.

12 MR. SHEPS: I will object
13 anyway.

14 Q Do you know how many controlled
15 substances there are in the B act?

16 MR. BORON: Objection as to
17 form.

18 MR. SHEPS: Objection.

19 A No.

20 Q Do you know, for instance, what
21 differentiates a drug between a Schedule 2 to a
22 Schedule 4 drug?

23 MR. BORON: Objection as to
24 form.

25 A I can't recite the specifics.

1 CINDY ORSER

2 Q If you generally know, then I'm just
3 looking for that answer.

4 MR. SHEPS: Is that a question?

5 MR. BENJAMIN: Yes.

6 A It has to do with medical benefits
7 versus risk to the public.

8 Q But you do know that THC is
9 classified under Schedule 1; correct?

10 A Yes.

11 Q Do you know what criteria are applied
12 to make a Schedule 1, make it to that list?

13 MR. SHEPS: Objection.

14 MR. BORON: Objection.

15 A No medical benefit.

16 Q So the list of Schedule 1 drugs have
17 no medical benefit as defined by the act; correct?

18 MR. SHEPS: Objection.

19 A Yes.

20 Q Now if you look again at page 2 under
21 the brief sequence of events that you stated
22 there, in number 3 you see there that you talked
23 about Mr. Horn's urine drug screen on October 9,
24 2012. Do you see that?

25 A Mm-hmm.

1 CINDY ORSER

2 Q And you state that, and I'm quoting:
3 We are not instructed as to which THC metabolite
4 produced that positive result.

5 Do you see that there?

6 A Yes.

7 Q You know that he was tested under
8 Department of Transportation requirements; do you
9 know that?

10 A Yes.

11 Q Do you have a familiarity with DOT
12 drug screenings?

13 A I know the sequence of events, and
14 the first level is immunoassays where there can be
15 cross reactivity.

16 Q Do you know how many drug classes are
17 tested in a DOT screening?

18 A It depends if it's the 5 panel or the
19 10 panel.

20 Q Do you know what he did.

21 A I think it was the 5.

22 Q So what are those drugs then that
23 were tested if it's a five-panel test?

24 A It would be on a copy of the report.
25 But it's barbiturates, marijuana is one of them.

1 CINDY ORSER

2 Amphetamines, opioids and benzodiazepines. I'm
3 not sure what is the fifth one is.

4 Q So for that DOT screening, do you
5 know what the cut off concentration is for a
6 positive result?

7 MR. BORON: Objection as to
8 form.

9 MR. SHEPS: Objection.

10 A For marijuana, it's 50 NG per ML.

11 Q So after that result is obtained, are
12 you aware that there's an additional testing to
13 confirm that original finding?

14 A Yes.

15 Q What is the cutoff concentration for
16 that?

17 A 15 nanogram per mil.

18 Q Do you know what substance is
19 specifically tested for in a DOT marijuana
20 confirmation test?

21 A No, because we're not told.

22 Q Is there a standard that the DOT
23 tests for?

24 MR. BORON: Objection as to
25 form.

1 CINDY ORSER

2 MR. SHEPS: Objection.

3 Q Do you know the answer to that
4 question?

5 A Well, they're inconsistent in the
6 reports. Some say THC, some say Delta 9, some say
7 THC metabolites.

8 Q So they vary for different tests?

9 A No. The information that we were
10 provided in the report.

11 Q Was not specified; is that your
12 testimony?

13 A Yes.

14 Q But typically in your understanding,
15 all of those different THC -- is it right to say
16 compounds or types -- all of those are tested in a
17 DOT screening test?

18 A They should be.

19 Q Okay. But to your knowledge, there's
20 not -- it's not that just one of them are tested.
21 The ones that you just mentioned.

22 A I think it's going to depend on the
23 lab. I mean the information that I saw, it wasn't
24 consistent.

25 Q Isn't it the carboxy THC that's

1 CINDY ORSER

2 tested in the DOT drug screening?

3 MR. BORON: Objection as to
4 form.

5 A The carboxy is what is excreted in
6 the urine. So that should be the metabolite they
7 test for.

8 Q So isn't it incorrect for you to say
9 that you did not know which one they were testing
10 for?

11 MR. SHEPS: Objection.

12 MR. BORON: Objection.

13 A You have to appreciate that I'm a
14 very detail-oriented person. So when you look at
15 the scans they provided, I did not see a scan of
16 the metabolite.

17 Q Do you know if the specific
18 metabolite is stated in DOT regulations as to what
19 the tests are supposed to screen for?

20 A I did not look up the DOT
21 regulations.

22 Q Okay. Look down, please, then at
23 number 5.

24 A Okay.

25 Q You said there that it was the

1 CINDY ORSER

2 product that -- the product that he sent to the
3 EMSL lab was not the identical product which he
4 had taken.

5 Do you see that there?

6 A Yes.

7 Q So it's fair to say also though, and
8 I will give you the CannLabs Certificates of
9 Analysis.

10 Let me give you what's been marked
11 Orser F. If you can take a look at Orser F.

12 MR. BENJAMIN: Off the record.

13 (Discussion held off the
14 record.)

15 Q I put in front of you now, to mix it
16 up a little bit, Exhibit Graham 13 that was marked
17 on December 1, 2017 as opposed to my Orser F,
18 which was out of order. So we're going to use
19 Graham Exhibit 13.

20 Dr. Orser, if you can take a look at
21 the Exhibit Graham 13. Could you describe for the
22 record what that is?

23 A It's a series of four Certificate of
24 Analysis from CannLabs testing Dixie hemp's 500
25 milligram dew drop. Yes. We have no lot numbers,

1 CINDY ORSER

2 so I don't really know if they're related.

3 Q So this product that -- this was one
4 of the things that -- these four pages were what
5 you reviewed as a basis for your opinions in your
6 report; correct?

7 A Yes.

8 Q Who provided you these?

9 A It was in the Messner Reeves
10 documents.

11 Q These are not specific as to a lot of
12 the product?

13 A Correct.

14 Q So as I think you just stated, these
15 do not correspond to the product that Mr. Horn
16 says that he took between October 1 and October 9,
17 2012; right?

18 A Correct.

19 Q Would it have been useful to you to
20 get the Certificates of Analysis that did apply to
21 that particular product?

22 A Yes.

23 Q Did you ask for those particular
24 Certificates of Analysis?

25 A Apparently they don't exist.

1 CINDY ORSER

2 Q The ones that were applicable to the
3 product as far back as October 1 do not exist?

4 MR. SHEPS: Objection.

5 A I haven't seen them.

6 Q Did you ask for them?

7 A I did.

8 Q What was the response to when you
9 asked for them?

10 A That they didn't have them.

11 Q Did you have an understanding of
12 whether they were destroyed?

13 A I mean I asked the attorney if they
14 existed. So I have no opinion.

15 Q What would have been the test date,
16 to your knowledge, for a product that was taken by
17 Mr. Horn as early as October 1, 2012? What would
18 have been in that test field?

19 MR. SHEPS: Objection.

20 A A date prior to October 1?

21 Q Could it have been any date, or would
22 it have been the week before?

23 MR. SHEPS: Objection.

24 Q Or something else.

25 MR. SHEPS: Objection.

1 CINDY ORSER

2 A Well, if you look at the evidence we
3 have here, it looks like they're guaranteeing
4 their results for two months. So, therefore, I
5 would deduce it should have happened within two
6 months.

7 Q All right. Thank you.

8 So is there any reason, to your
9 knowledge, that Certificates of Analysis would not
10 exist only two weeks prior to the ones you were
11 provided?

12 MR. BORON: Objection as to
13 form.

14 MR. SHEPS: Objection.

15 A I don't know.

16 Q I mean basing your report on
17 Certificates of Analysis of a product that was
18 tested on October 16, 2012, does that make the
19 report irrelevant?

20 MR. BORON: Objection as to
21 form.

22 MR. SHEPS: Objection.

23 A No.

24 Q Why not?

25 A This is just one more bit of

1 CINDY ORSER

2 information in this case to take into
3 consideration.

4 Q Looking at these Certificates of
5 Analysis, you cannot draw any conclusion, can you,
6 for the product that was taken two weeks prior?

7 MR. BORON: Objection as to
8 form.

9 MR. SHEPS: Objection.

10 A Not definitively.

11 Q Is it your testimony that the product
12 that was tested on October 16, 2012 was identical
13 to the one that was taken on October 1, 2012?

14 MR. SHEPS: Objection.

15 MR. BORON: Objection as to
16 form.

17 A I can't say that.

18 Q You didn't see anything that would
19 show you something like that; right?

20 A No.

21 MR. BORON: Objection as to
22 form.

23 MR. SHEPS: Objection.

24 Q Did you receive any correspondence
25 from anyone stating that these Certificates of

1 CINDY ORSER

2 Analysis in front of you were a representative --
3 were as to a representative sample of that which
4 was on the market on October 1, 2012?

5 MR. SHEPS: Objection.

6 MR. BORON: Objection as to
7 form.

8 A I don't know.

9 Q So we don't even know if what was
10 tested here on these Certificates of Analysis was
11 even a representative sample; correct?

12 A Correct.

13 MR. BORON: Objection as to
14 form.

15 MR. SHEPS: Objection.

16 Q I guess the question is then why do
17 you think these would be useful in determining the
18 THC content of the Dixie Elixir product at issue
19 here?

20 A I found this relevant because it
21 demonstrates that Dixie was complying with the
22 requirements in the State of Colorado, that their
23 products are below the .3 percent THC.

24 Q That .3 percent is a Colorado
25 threshold?

1 CINDY ORSER

2 A It's Colorado, but it's also the Farm
3 Bill; right? But it is Colorado.

4 Q Back in 2012, the Farm Bill didn't
5 apply; right?

6 A Right.

7 Q So back in 2012, was .3 percent a
8 state legal limit for THC in Colorado?

9 MR. SHEPS: Objection.

10 A That was my assumption.

11 Q We had to get the .3 percent from
12 somewhere. It's not your testimony that it came
13 from the Controlled Substances Act; right?

14 MR. BORON: Objection as to
15 form.

16 MR. SHEPS: Objection.

17 A I can't clarify that without looking
18 at the document.

19 Q To your knowledge, in 2012, say in
20 the month of October of 2012, there was no maximum
21 legal limit for THC in the State of New York;
22 correct?

23 MR. SHEPS: Objection.

24 A I don't know.

25 Q Do you have an idea of whether -- if

1 CINDY ORSER

2 the reason for you not having the specific
3 Certificates of Analysis had anything to do with
4 CannLabs' closure as a business?

5 MR. BORON: Objection to form.

6 A I can't say.

7 Q As you sit here today, you don't know
8 where CannLabs records would be held?

9 A I don't know.

10 Q Do you think that Jennifer Murray
11 would be able to tell me?

12 MR. BORON: Objection to the
13 form.

14 A I don't know.

15 Q Do you have any reason to believe
16 with your testimony as to the relevance of this
17 that this can be relied upon as an accurate
18 measure of THC in the product of October 1, 2012?

19 MR. BORON: Objection as to
20 form.

21 MR. SHEPS: Objection.

22 A I can't really say that either.

23 Q Okay. What are batch records as
24 compared to Certificate of Analysis?

25 A So a batch record would be for

1 CINDY ORSER

2 whatever the batch size is, whatever that unit is.

3 So batch is -- usually the cured flower is a

4 batch, or a bulk extraction is a batch. This is a

5 finished product.

6 Q Would there have been batch records
7 with respect to both the product that was tested
8 on October 16 and the one that was tested back on
9 October 1, 2012?

10 A That's a question for CannLabs and
11 Dixie. I don't know the answer.

12 Q Is that something that you would have
13 liked to have seen for this report?

14 A Yes.

15 Q Did you ask them for that?

16 MR. BORON: Objection as to
17 form.

18 MR. SHEPS: Objection.

19 A I did not.

20 Q To clarify, the batch records have to
21 do with the quantity of the sample that's provided
22 to make these Certificates of Analysis; is that a
23 proper statement?

24 A It's just upstream of a finished
25 product. So, you know, if you're Stouffer and

1 CINDY ORSER

2 you're manufacturing frozen lasagna, first you
3 have to cook the noodles, right, and then you have
4 to make the sauce. Then you have your final
5 product, which is the lasagna.

6 Q Gotcha. But batch records don't talk
7 about THC, right, to your knowledge?

8 MR. SHEPS: Objection.

9 A To my knowledge for them, I don't
10 know.

11 Q Did you at all find it unusual that
12 they gave you these Certificates of Analysis for a
13 different product?

14 A Well, yes.

15 MR. BORON: Objection as to
16 form.

17 Q Okay. Looking at the actual face of
18 these documents, if you would, the first page of
19 Graham 13, Graham Exhibit 13, does show what you
20 stated as the maximum legal limit for THC --
21 excuse me, to .3 percent, 0.3 percent?

22 A Yes.

23 Q And next to it it says asterisk,
24 undetectable, and the asterisk seems to refer to
25 the asterisk explanation underneath. It says:

1 CINDY ORSER

2 Any test value below. 1 percent is considered to
3 be undetectable.

4 You see that; right?

5 A Yes.

6 Q So that particular certificate --
7 well, was that -- in that packet before you, do we
8 have the exact numbers that -- where it would have
9 fallen below the .1 percent later on in the
10 exhibit, or were there other pages?

11 MR. SHEPS: Objection.

12 MR. BORON: Objection as to
13 form.

14 A Yes.

15 Q Okay. Where is it that the amount
16 per product that's undetectable, in other words,
17 that which is below .1 percent, which page does
18 that correspond to?

19 MR. BORON: Objection.

20 A I think you're asking to look at
21 page 2 where it says .05 percent.

22 Q Isn't that a different -- that's the
23 same test?

24 A I don't know.

25 Q What are the last two pages then?

1 CINDY ORSER

2 Could you please tell me what the last two pages
3 of the exhibit are, which seem to be a breakdown
4 of the assays.

5 A It seems to be a much more extensive
6 Certificate of Analysis where they're looking at
7 six different cannabinoids. So we get the actual
8 assay results. They provide a ratio and then in a
9 sample size what the actual content would be.

10 Q Okay. So please clarify for me,
11 because I do not understand, are these two
12 separate samples tested, or is this one combined
13 sample that was tested?

14 MR. BORON: Objection as to
15 form.

16 MR. SHEPS: Objection.

17 A I don't have enough information. I
18 mean the test ID number is the same for the first
19 two. And the last two, where we have more
20 information, give a slightly different
21 identification.

22 Q Right. Thank you. There's one that
23 says -2, and there's one that says -5. Is that
24 what you're referring to?

25 MR. BORON: Objection to form.

1 CINDY ORSER

2 A I'm talking about it says CBD
3 1011.rnd-500 milligrams, and then we have one that
4 says CBD 0803 mix E2.

5 Q So that would indicate to you then
6 that it was two separate samples?

7 MR. BORON: Objection as to
8 form.

9 MR. SHEPS: Objection.

10 Q Is that a fair statement?

11 MR. BORON: Objection as to
12 form.

13 A I would say so, because you can see
14 the numbers are different.

15 Q The numbers are different, so can I
16 glean from that that there were at least two
17 separate samples on that test date?

18 MR. BORON: Objection as to
19 form.

20 Q So each of the 500-milligram products
21 that you see in the last two pages that are, as
22 you said, a more detailed breakdown of each of the
23 cannabinoids that were tested?

24 A Right. Only one of them says
25 500 milligrams.

1 CINDY ORSER

2 Q Okay. Do we know how many milligrams
3 the other one is?

4 A No.

5 Q In each case, in one cannabinoid
6 assay, the one with the 500 milligram notation
7 there says that the max THC is .04; right?

8 A Mm-hmm.

9 Q The other one says the max THC is
10 .05?

11 A Yes.

12 Q Do those correspond to the first two
13 pages of that exhibit, which looks more like a
14 summary; are you able to tell me that?

15 A So we have total CBD of 516. I
16 think -- I think page 1 corresponds with page 4,
17 and -- yes, page 1, these -- these are -- the only
18 thing different between these two is this .05.

19 MR. BORON: Can you clarify for
20 the record when you say between these
21 two? Nobody will know what you're
22 talking about when they look at the
23 records later. Thank you.

24 A The first two pages --

25 MR. SHEPS: To clarify, if I'm

1 CINDY ORSER

2 not mistaken, you're saying that
3 there's no discernible difference
4 between page 1 and page 2 of this
5 exhibit in your opinion?

6 THE WITNESS: Correct.

7 MR. SHEPS: Other than this, the
8 indication of the amount per product?

9 THE WITNESS: Right. Right.

10 Q That's a pretty discernible
11 difference actually.

12 You stated that the .05 max THC, that
13 would correspond to the summary page, if you will,
14 or page 2 of this exhibit that shows the .05;
15 correct?

16 A Page 4.

17 Q Okay. So the one that says
18 undetectable, in other words, the very first page
19 that says undetectable, does that correspond to
20 the 500 milligram product that I think is page 3
21 in the exhibit?

22 MR. BORON: Objection as to
23 form.

24 A I can't make that judgment.

25 Q So would you agree with me then that

1 CINDY ORSER

2 .05 and .04 are less than .3; correct?

3 A Correct.

4 Q However, those numbers indicate some
5 quantity of THC; right?

6 A Detectable, even though right here
7 they say if it's below .1, it's not detectable,
8 even though they're reporting it later.

9 Q When you say reporting it later, are
10 you talking about the .05 percent?

11 A On the first page it says
12 undetectable. It defines undetectable as below
13 0.1, but yet on the last two pages, they're
14 reporting a value of less than .1. The .04 and
15 .05 percent.

16 Q So there is, at least with respect to
17 the .05, a detectable amount of THC; correct?

18 MR. BORON: Objection as to
19 form.

20 A It's being reported.

21 Q And it doesn't say undetectable
22 there; right?

23 A Right.

24 Q So that is some quantity of THC in at
25 least these Certificates of Analysis?

1 CINDY ORSER

2 A Yes.

3 Q If you could take a look, please, at
4 what's been marked -- I'm sorry. I did not staple
5 this.

6 This is Orser D. Take a moment, if
7 you would, to take a look at Orser D. I don't
8 have a copy.

9 MR. SHEPS: Can you explain what
10 Exhibit D is, for the record?

11 MR. BENJAMIN: Well, yes.

12 Q First of all, do you recognize what
13 Exhibit D is?

14 A It's the EMSL report.

15 Q Did you review that report?

16 MR. BORON: Just to clarify,
17 it's about 40 pages, and they're not
18 clipped together. Those pages
19 contain data; is that fair to say?

20 MR. BENJAMIN: Sure. Yes.

21 MR. BORON: Do we have reason to
22 think that every one of these pages
23 has something to do with EMSL?

24 THE WITNESS: Yes. This is the
25 instrument they were using. These

1 CINDY ORSER

2 are the mass spectra. I have no idea
3 why there are so many of them.

4 Q Now, item number 5 that you reviewed
5 was that report that's sitting in front of you; is
6 that correct?

7 MR. SHEPS: Objection. Without
8 reviewing every page, it's hard to
9 know for sure if that's exactly the
10 report she looked at.

11 Q Do you remember seeing what's in
12 front of you?

13 A Yes.

14 Q Now with respect to what you said
15 about EMSL in your report, you said that EMSL
16 purportedly identified THC in the 100 milligram
17 sample to the extent of 170 parts per million. Do
18 you see that there? It's paragraph 6 of your
19 report at the bottom, very bottom.

20 A Okay.

21 Q Sorry. Page 2.

22 A Yes. Page 3 or 2.

23 Q Page 2 of your report.

24 A Okay. Yes.

25 Q But that's -- if you look at the

1 CINDY ORSER

2 exhibit now, even I think the second page, if you
3 look at the second page, that is actually what
4 they found, right, a .17 percent?

5 A .017.

6 Q .017 percent, which is 170 parts per
7 million; correct?

8 A Right.

9 Q That's actually what they found.

10 You stated in your report as to their
11 results that EMSL did not report a value for CBD
12 or any other substance in the exemplar product?

13 A Correct.

14 Q So why would that be important?

15 A Because it's a CBD product, so if one
16 wants to have confidence in this lab's analysis,
17 they should have provided a value for CBD.

18 Q If the testing was specific only to
19 THC though, why would you need to test for CBD?

20 A Point of reference to the product.
21 If this is a 100 milligram CBD product, it would
22 give their finding more credibility to reference
23 it to the main ingredient of the elixir.

24 Q But testing for CBD separate from THC
25 doesn't tell you anything about THC content; does

1 CINDY ORSER

2 it?

3 A Well, I mean it's like I would never
4 get a CBD product in and not also test for CBD as
5 well as THC.

6 Q But you're not -- you don't have
7 consumer customers, do you? You have business
8 customers; don't you?

9 A And we do testing for patients.

10 Q Okay. But testing for CBD, again,
11 doesn't tell you anything about THC content;
12 correct? We can agree on that?

13 MR. BORON: Objection as to
14 form.

15 MR. SHEPS: Objection.

16 Q Does it?

17 MR. BORON: Objection as to
18 form.

19 A Giving a value for CBD without THC
20 doesn't make sense.

21 Q But does it tell you anything about
22 THC content?

23 A CBD alone? No.

24 MR. BORON: Objection as to
25 form.

1 CINDY ORSER

2 Q Have you stated in your report here
3 that the EMSL report with respect to the THC
4 content in at least the 100 milligram product is
5 not reliable?

6 A I'm not sure I said it wasn't
7 reliable. I'm just saying because the EMSL lab
8 seems to be an accredited lab. They're listing,
9 and that's why I had an appendix, all the tests
10 that they have certificates for. There's nothing
11 here with regard to cannabinoids.

12 Q But very few labs have anything with
13 respect to testing for cannabinoids; correct?

14 MR. BORON: Objection as to
15 form.

16 A I don't know. I mean all of the DOT
17 labs do.

18 Q Did you look on the website for EMSL
19 and search for THC when you looked at this?

20 A Yes.

21 Q Did you find entries for THC?

22 A No.

23 Q Would it surprise you to know there
24 are eight separate entries on that website for
25 THC?

1 CINDY ORSER

2 MR. BORON: Objection as to
3 form.

4 A Can you show that to me?

5 Q I'm asking you. When did you check
6 the EMSL website for THC?

7 A It's the date of my report. Sometime
8 in September.

9 Q So sometime in September of this
10 year, you checked the EMSL website for THC
11 testing; correct?

12 A Yes. They have more than one
13 facility, so I went to their corporate website.

14 Q Right. That's where you found the
15 sort of menu listing that's attached as your
16 Appendix A; correct?

17 A Yes.

18 Q THC is not listed on there in that
19 listing; correct?

20 A That's correct.

21 Q But you did do a search back then on
22 the website for THC specifically, and you did not
23 find anything; is that your testimony?

24 A For cannabinoids, not THC.

25 Q So you punched in CBD as a search?

1 CINDY ORSER

2 A No. I spelled out cannabinoid.

3 Q You did not put in THC or what THC
4 stands for?

5 Turn to page 3 of your report. You
6 did state in maybe one-third down the page that
7 what you had in front of you for the certificates
8 of analysis were as to "representative Dixie
9 Elixirs and Edible Products; right? Do you see
10 that?

11 A Yes.

12 Q But, in fact, we just established
13 that those Certificates of Analysis are not
14 associated with the actual product lot that was
15 used by Mr. Horn?

16 A Right. Neither is this.
17 (Indicating)

18 MR. SHEPS: For the record, this
19 is Orser D.

20 Q You're indicating the 100 milligram
21 product --

22 A Right.

23 Q -- that was sent to EMSL?

24 A Right.

25 Q In that listing on page 3 in the

1 CINDY ORSER

2 middle of the page where you indented the listing
3 for each of the THC contents that were identified
4 as to the 500-milligram product, you see here that
5 you -- you lay out a .05 percent, and a .04
6 percent and another .04 percent.

7 Do you see those three listings?

8 A Yes.

9 Q Is it your testimony that the product
10 that Mr. Horn took would have an identical
11 analytical profile to those listing there?

12 A No.

13 Q But it's true though that the product
14 that Mr. Horn took would likely have been
15 manufactured around the same time as that which
16 was manufactured that corresponds to these
17 Certificates of Analysis; is that correct?

18 MR. SHEPS: Objection.

19 A I can't say.

20 Q Again on these Certificates of
21 Analysis that are in front of you as Graham 13,
22 there's nothing in these Certificates of Analysis
23 that would indicate to you whether what was tested
24 was industrial hemp, or actually is there anything
25 that would indicate to you that this was not

1 CINDY ORSER

2 industrial hemp, that this was the final
3 formulated product?

4 MR. BORON: Objection to form.

5 MR. SHEPS: Objection.

6 A It says 500 milligrams. It gives a
7 sample size. I'm assuming it was the formulated
8 product.

9 Q Were you ever supplied the product
10 from Dixie or Medical Marijuana or anybody?

11 A No.

12 Q Okay. Moving on to page 4 of your
13 report.

14 MR. SHEPS: Can we take a brief
15 break?

16 MR. BENJAMIN: Okay.

17 (At this time, a brief recess
18 was taken.)

19 MR. SHEPS: I just want to
20 clarify something for the record.
21 Jeff, we had spoken just a moment ago
22 about the exhibit marked as Orser D
23 which was an internal chain of
24 custody with an order ID 281201415
25 dated October 29, 2012.

1 CINDY ORSER

2 It's my understanding that this
3 was intended to be the same exhibit
4 as was annexed to Dr. Graham's
5 August 29, 2017 report number 6,
6 which was identified there as
7 laboratory data and report for
8 product testing order number
9 281201415 issued by EMSL Analytical
10 Inc. on November 5, 2012.

11 CONTINUED EXAMINATION

12 BY MR. BENJAMIN:

13 Q On page 3 of your report, Dr. Orser,
14 you see where you stated, and I'm quoting, All
15 three of the Dixie Elixir -- do you see that?

16 A Mm-hmm.

17 Q After they listed Certificates of
18 Analysis, you state, "All three of the Dixie
19 Elixirs and edibles products had an order of
20 magnitude Less than the state and federal limit of
21 .3 percent THC. In fact, the same Dixie X hemp
22 500 milligram due drop contains just .05 percent
23 THC.

24 So in that paragraph you are stating
25 that the .3 percent is a state and federal limit

1 CINDY ORSER

2 together; right?

3 A Yes.

4 Q What state are you talking about
5 there?

6 A Colorado.

7 Q And because that's the state where we
8 believe the product was manufactured; correct?

9 A Correct.

10 Q You're saying that there's also a
11 federal limit of the .3 percent. You see that
12 there?

13 A Yes.

14 Q As you sit here today, you don't know
15 the source of that maximum threshold for the THC
16 guideline?

17 A Not in 2012.

18 Q But in 2014, it was the Farm Bill?

19 A Yes.

20 Q And in that statement, implicit in
21 that statement, because you haven't stated it
22 specifically, you're applying that .3 percent
23 threshold to the final formulated Dixie product at
24 issue here?

25 A Yes.

1 CINDY ORSER

2 Q Dixie Elixirs or Medical Marijuana
3 would be in the best position to provide the
4 Certificates of Analysis that would apply to the
5 product that Mr. Horn took; isn't that correct?

6 MR. BORON: Objection as to
7 form.

8 MR. SHEPS: Objection.

9 A I would assume so.

10 Q Could there be anybody else that
11 would provide those records?

12 MR. BORON: Objection as to
13 form.

14 MR. SHEPS: Objection.

15 A I don't know if at the time there was
16 a requirement to submit the test results to the
17 State of Colorado.

18 Q If I subpoena the State of Colorado,
19 do you think that they would have the Certificates
20 of Analysis?

21 MR. BORON: Objection as to
22 form.

23 A No.

24 Q What would they have with respect to
25 this product?

1 CINDY ORSER

2 MR. SHEPS: Objection.

3 MR. BORON: Objection as to
4 form.

5 A I don't know.

6 Q You just said that some of these
7 records would be submitted to the State of
8 Colorado.

9 MR. SHEPS: Objection.

10 A I stated perhaps. In Nevada, all of
11 our data goes to the state.

12 Q Data as in Certificates of Analysis?

13 A Yes.

14 Q For every product tested?

15 A Every, yes. And currently that
16 happens in Colorado. But in 2012, I doubt it.

17 Q CannLabs would have been in
18 possession of it under normal circumstances;
19 right?

20 MR. SHEPS: Objection.

21 A Yes.

22 Q Isn't it true that if the records for
23 the specific product that Mr. Horn took starting
24 on October 1, 2012 showed that there was no
25 measurable THC, that would completely undermine

1 CINDY ORSER

2 the foundation of his case; would it not?

3 A I think there are other variables,
4 but since his premise is that he took a product
5 that had contaminating THC and, therefore, he
6 failed his drug test, but we don't know what else
7 Mr. Horn was doing.

8 Q But because those specific records
9 were not provided by Dixie for Medical Marijuana,
10 can we conclude the actual product that he took
11 contained a measurable quantity of THC, which is
12 at least consistent with the levels that are in
13 these Certificates of Analysis?

14 MR. SHEPS: Objection.

15 MR. BORON: Objection as to
16 form.

17 A No, I can't emphatically say that.

18 Q Look at then page 4 of the heading
19 urine drug test where you talk about his urine
20 drug test. You state there that THC -- do you see
21 where you say is rapidly absorbed during smoking;
22 do you see that part?

23 A Right.

24 Q But to be clear, this case is not
25 about smoking, it's about oral administration;

1 CINDY ORSER

2 correct?

3 A Right.

4 Q Does the fact that this case involves
5 the oral administration, or as you rightly pointed
6 out, sublingual administration of the product,
7 does that change anything that you would say in
8 this paragraph on urine drug testing?

9 MR. SHEPS: Objection.

10 A No.

11 Q In other words, is the half-life any
12 different as you discuss in the latter paragraph
13 here?

14 MR. BORON: Objection as to
15 form.

16 A Because everyone's metabolism can
17 vary, and we know there are many gene variants
18 that affect how cannabinoids are eliminated from
19 the body, it's not an absolute. It's an average.

20 Q But you define here that the
21 half-life of carboxy THC is the time that it takes
22 to exit the body; right?

23 A Mm-hmm.

24 Q In other words, half-life is the time
25 it takes the body to reduce the concentration by

1 CINDY ORSER

2 one half; is that what half-life is?

3 A Yes.

4 Q That's a correct definition. Okay.

5 A How I'm using it in the sentence.

6 Q Okay. Good enough.

7 But is it true that the time that it
8 takes a substance to completely be eliminated from
9 the body is actually five times the half-life;
10 isn't that true?

11 A It depends upon how long the
12 individual has been taking the product.

13 Q Okay. So if a person was taking it
14 for nine days, for instance --

15 MR. BORON: What do you mean by
16 it; the Dixie product?

17 MR. BENJAMIN: The Dixie
18 product; right.

19 MR. BORON: We'll be here all
20 day just talking about any old
21 product.

22 MR. BENJAMIN: That's the only
23 product.

24 A We were never told how much of the
25 product he was taking on a daily dose basis.

1 CINDY ORSER

2 Q So you wouldn't be able to say with
3 any certainty that it would be five times the
4 half-life?

5 A No.

6 Q Thank you. Let's flip to page 5.
7 Your conclusions.

8 You state that no one can opine with
9 any degree of scientific confidence that the Dixie
10 product caused Mr. Horn to fail the DOT urine
11 test; correct?

12 MR. SHEPS: Where are you
13 looking?

14 MR. BENJAMIN: Number 1.

15 A Yes.

16 Q But is there any reason to believe
17 that the test results from the actual product,
18 hypothetically if they were provided, because they
19 were not, but if they were provided, is there any
20 reason to believe they would be inconsistent with
21 those from the representative product that was
22 provided?

23 MR. SHEPS: Objection.

24 MR. BORON: Objection to form

25 as.

1 CINDY ORSER

2 A I can't say.

3 Q Looking at the EMSL report,
4 especially the first page. You stated that --

5 MR. SHEPS: Hold on. You mean
6 Exhibit D; right? There were
7 multiple EMSL reports.

8 MR. BENJAMIN: The one that is
9 marked in front of you as Orser D.

10 MR. BORON: Thank you.

11 Q Not only with respect to that first
12 page, but you mentioned that there's uncertainty
13 as to the chain of custody in the product that was
14 supplied to EMSL; right? That's number 3 of your
15 report; right?

16 A Right.

17 Q When you said there was some
18 uncertainty in the chain of custody, were you
19 worried that there was a concern with the sample
20 being a adulterated?

21 A That's a possibility.

22 Q What were you concerned with when you
23 wrote there's considerable uncertainty with the
24 chain of custody aspect?

25 A Right. Because of how it came. His

1 CINDY ORSER

2 wife ordered it. It was delivered and there was
3 something about it. His daughter accepted it when
4 it came, and then I don't know how he got it to
5 this lab. I mean there's just a lot of chain of
6 custody issues that were not addressed.

7 Q So adulteration is one specific issue
8 that you were worried about with all that you just
9 testified; right?

10 A Yes.

11 Q That someone could have changed the
12 sample somehow; correct?

13 A Or the sample could have gotten
14 heated up or left in the sun, or, you know --

15 Q Or that somehow THC was introduced to
16 the sample?

17 A I guess theoretically.

18 Q Or even removed from the sample. Is
19 that theoretically possible?

20 A Probably not.

21 Q It would be kind of tough, but it can
22 happen.

23 A Unless you have a chemistry lab.

24 Q We have you.

25 But isn't it true though that the THC

1 CINDY ORSER

2 content in the EMSL lab at 170 parts per million
3 is, in fact, consistent with the Certificates of
4 Analysis for the 500-milligram product that you
5 actually reviewed?

6 MR. SHEPS: Objection to form.

7 MR. BORON: Objection as to
8 form.

9 MR. SHEPS: Wasn't it parts per
10 billion?

11 A This is actually less than the
12 reports we have here.

13 Q Yes. But wouldn't it be consistent
14 for a hundred milligram product, a Dixie product
15 here, to be Less than a 500-milligram product
16 concentration?

17 MR. BORON: Objection as to
18 form.

19 MR. SHEPS: Objection.

20 A We don't have the information as to
21 the concentration. So a hundred milligrams is an
22 absolute amount, and 500 milligrams is an amount.
23 But what volume were they in, which gives you the
24 concentration? We don't know that.

25 Q So you're saying that the 170 parts

1 CINDY ORSER

2 per million in the EMSL sample, setting aside the
3 credibility of the sample that you have called
4 into question, that that result of the 170 parts
5 per million, you cannot say that that's consistent
6 with the 500 parts per million at least that was
7 found in the Certificates of Analysis we provided
8 for you?

9 A That's correct.

10 MR. BORON: Objection as to
11 form.

12 Q Since the amount of -- looking at
13 simply the amounts of the THC in both the hundred
14 milligram in the ESL result and the Certificate of
15 Analysis for the 500-milligram representative
16 product, the relationship being approximately
17 three times list; correct?

18 MR. BORON: Objection as to
19 form.

20 MR. SHEPS: Objection.

21 A We can't really compare them; right?

22 Q Well, the numbers themselves are
23 three times less in the two different results;
24 isn't that correct?

25 MR. BORON: Objection as to

1 CINDY ORSER

2 form. What numbers?

3 MR. BENJAMIN: I just stated
4 them. 170 as opposed to 500 in the
5 Certificates of Analysis.

6 MR. BORON: 500 what?

7 MR. BENJAMIN: 500 parts per
8 million.

9 THE WITNESS: .05.

10 MR. BENJAMIN: That's the .05
11 number.

12 Q Given that, given what evidence of
13 chain of custody are there or adulteration issues
14 is there with that kind of ratio?

15 MR. SHEPS: Objection.

16 MR. BORON: Objection as to
17 form.

18 A It's just the comparability. These
19 aren't C of As for the product Mr. Horn took.
20 We've never seen the product Mr. Horn took. The
21 product he took was never tested. This is another
22 version of the product at a later date. We don't
23 know if they changed, how they did anything.
24 There's a degree of uncertainty here.

25 Q You mentioned -- do you feel that the

1 CINDY ORSER

2 product that he took was never tested?

3 A That's correct.

4 Q It was never at all tested, to your
5 knowledge?

6 A That's correct.

7 Q Because there would be Certificates
8 of Analysis if it was?

9 A I mean it was never tested externally
10 by an independent lab. I don't know if CannLabs
11 ever tested it. I don't know that.

12 Q You don't know?

13 A It appears not.

14 Q There's a possibility it was never
15 tested at all by CannLabs; correct?

16 MR. BORON: Objection as to
17 form.

18 MR. SHEPS: Objection.

19 A Right.

20 Q It's your testimony in this case
21 though that the EMSL did not have the competence
22 or the certifications adequate to accurately test
23 for THC; is that your testimony?

24 A I don't actually know. You were
25 indicating that they actually were. I couldn't

1 CINDY ORSER

2 find it. It's suspect to me that they didn't
3 bother to give us CBD numbers since it's a CBD
4 product. It's very odd.

5 Q If you saw CBD on their result, you
6 would have a different conclusion as to their --
7 as to the credibility of their report?

8 MR. BORON: Objection as to
9 form.

10 A Yes.

11 Q Is there a scientific principle or
12 foundation that you assert that Mr. Horn should
13 have been aware? And I'm specifically referring
14 you to the last paragraph of your paragraph 7 on
15 pages 5 and 6 of your report.

16 Is there a specific scientific
17 principal or foundation that you're saying exists
18 that he should have been aware as to the labeling
19 on the Dixie product was not definitive of its
20 contents?

21 MR. SHEPS: Objection.

22 MR. BORON: Objection as to
23 form.

24 A Because the label says this product
25 contains CBD and other cannabinoids, and there's

1 CINDY ORSER

2 no specification given, if I were working in an
3 industry that required random drug testing, I
4 would be concerned.

5 Q That's a personal opinion; right?
6 That's not based on any scientific foundation or
7 source; right?

8 MR. SHEPS: Objection.

9 MR. BORON: Objection as to
10 form.

11 A Pulling together what we know, that
12 hemp can have up to .3 percent THC. This says it
13 has other cannabinoid. THC is a cannabinoid.
14 It's deductive logic to me.

15 Q Your testimony in this case is that
16 the product, at least from the representative
17 samples that you reviewed, had under the .3
18 threshold for THC; correct?

19 MR. BORON: Objection as to
20 form.

21 MR. SHEPS: Objection.

22 A Yes.

23 Q Without seeing a label as to that
24 effect, as you see in what's in front of you as
25 Orser G and H, without seeing a label, there would

1 CINDY ORSER

2 be no real way for a person to know if there was
3 THC in the product; would there?

4 MR. BORON: Objection as to
5 form.

6 A I suppose if you're well read you
7 would know that that was a potential.

8 Q So was there somewhere in 2012 that
9 he could have found out that the Dixie product had
10 THC in it just browsing the Internet or anywhere?

11 MR. SHEPS: Objection.

12 MR. BORON: Objection as to
13 form.

14 A I don't know. I can't speak for him.

15 Q But you're aware that there is a
16 specific labeling requirement as to here, THC?

17 MR. BORON: Objection.

18 A No, I'm not aware of what the
19 labeling requirements were in 2012 in the State of
20 Colorado.

21 Q Are there labeling requirements as to
22 just simply listing active ingredients to
23 something?

24 MR. SHEPS: Objection.

25 A What category of product?

1 CINDY ORSER

2 Q How about --

3 A Dietary supplements.

4 Q How about the one here, formulated
5 Medical Marijuana?

6 A Like I said, I don't know what the
7 rules of engagement were in 2012.

8 Q Was there a general requirement that
9 active ingredients should have been listed on a
10 label?

11 MR. SHEPS: Objection as to
12 form.

13 A I don't know.

14 Q Do you feel as part of your opinion
15 that any measurable amount of THC should have been
16 listed under the active ingredients portion of the
17 label here?

18 MR. BORON: Objection as to
19 form.

20 MR. SHEPS: Objection.

21 A I don't know if it was required.

22 Q But it's your testimony that Mr. Horn
23 should have done additional research outside of
24 just simply reviewing the label --

25 MR. SHEPS: Objection.

1 CINDY ORSER

2 MR. BORON: Objection as to
3 form.

4 Q -- to find out whether he should not
5 be taking this product?

6 A I'm just saying that he could have
7 learned more about it than he apparently bothered
8 to.

9 Q In fact, your report says he should
10 have had the product tested before he took it;
11 right?

12 MR. BORON: Objection as to
13 form.

14 MR. SHEPS: Objection. Where
15 are you looking, counsel?

16 MR. BENJAMIN: The last sentence
17 of the report.

18 A That's my opinion.

19 Q Now if you would take a look, please,
20 at Orser E. Orser E, do you recognize that
21 exhibit?

22 A Yes.

23 Q What do you recognize that to be?

24 A It's an E-mail correspondence with
25 someone from EMSL, Scott Vanetten,

1 CINDY ORSER

2 V-A-N-E-T-T-E-N, to Mr. Horn.

3 Q Do you know Scott Vanetten?

4 A No.

5 Q Do you know anybody at EMSL?

6 A No.

7 Q On the first page of this E-mail
8 that's dated November 8, 2012, at the bottom
9 anyway --

10 A Yes.

11 Q -- do you see there that Mr. Vanetten
12 is telling Mr. Horn, and I'm quoting, Douglas,
13 your report is attached. Since the sample
14 contained THC, I may not be able to return it to
15 you as per our DEA registration.

16 It goes on to say some other things.
17 But at the top of the page you see that it says in
18 a later E-mail, Douglas, we can't return your
19 sample. That's simply what it says; right?

20 A Right.

21 Q To your knowledge, are you
22 knowledgeable about DEA registrations that are
23 being referred to here?

24 MR. BORON: Objection as to
25 form.

1 CINDY ORSER

2 A Somewhat.

3 Q What do you know about DEA
4 registration when it comes to specifically Medical
5 Marijuana products?

6 MR. BORON: Objection as to
7 form.

8 MR. SHEPS: Objection.

9 A That if you are a facility or a
10 testing lab, you have a DEA license, I actually
11 think that they should not have accepted this
12 product if they thought it had THC in it.

13 Q They wouldn't have known until
14 testing it; right?

15 A Right.

16 Q Are there ways to find out about THC
17 before actually going and testing it?

18 A They were being asked to test it for
19 THC, so sort of assuming that they're going to be
20 conducting a THC test.

21 Q How could they have found out if
22 there was a THC content before going for formal
23 testing?

24 A Well, they couldn't have. I'm just
25 saying they agreed to do a THC test at a DEA

1 CINDY ORSER

2 facility. The product wasn't under any DEA
3 control.

4 Q The product wasn't under DEA control?

5 A I mean normally if you have a DEA
6 license, you get DEA control of material from
7 another DEA licensed facility. So this was
8 outside of that scope. But then they decided to
9 classify it.

10 Q It's outside of the scope because
11 Mr. Horn doesn't have a DEA registration, is that
12 why you said out the scope?

13 A Yes. So it wasn't being shipped from
14 a DEA licensed facility.

15 Q Therefore, that's the same reason why
16 they could not ship it back to him; right?

17 MR. SHEPS: Objection.

18 MR. BORON: Objection as to
19 form.

20 A Apparently.

21 Q Turn to the second page. I didn't
22 mean to make you guess. If you look at the second
23 page at the top, there is a follow-up E-mail on
24 November 26, 2012 which states, again from Scott
25 Vanetten to James Horn, I'm quoting, our DEA

1 CINDY ORSER

2 registration prohibits us from returning positive
3 samples back to the shipper unless they have a DEA
4 registration. Legality questions should be
5 directed to an attorney.

6 Do you see that?

7 A Yes. Mm-hmm.

8 Q So it was EMSL's concern that there
9 was a positive sample, and they would be violating
10 their DEA registration were they to ship it;
11 correct?

12 MR. BORON: Objection as to
13 form.

14 MR. SHEPS: Objection.

15 A I guess so.

16 Q What would be their responsibility
17 having found a positive result for THC as to the
18 sample; what were they supposed to do with that
19 sample?

20 A I mean he says right here a legal
21 question should be directed to an attorney.

22 Q So you don't know; the answer is you
23 don't know what he should have done?

24 MR. SHEPS: Objection.

25 A (Nodding)

1 CINDY ORSER

2 Q Do you know what specific guideline
3 of either DEA regulations he would be violating if
4 he did ship it?

5 MR. SHEPS: Objection.

6 MR. BORON: Objection as to
7 form.

8 A I don't know.

9 Q Just have this, if you could, in
10 front of you briefly.

11 You're familiar with Clinical
12 Reference Laboratory; correct?

13 A I'm not familiar with them.

14 Q Do you know who Clinical Reference
15 Laboratory is?

16 A I know that they're the lab, the DOT
17 lab, that tested his urine.

18 Q To your knowledge, are they a lab
19 that is qualified or competent to test urine
20 samples?

21 A Yes.

22 Q Did you review the Clinical Reference
23 Laboratory report?

24 A Yes.

25 Q I don't know if I need to put it in

1 CINDY ORSER

2 front of you at the moment, but let's just ask
3 questions about it quickly.

4 You're aware that that lab found a
5 positive test in a urine drug screen analysis for
6 THC; correct?

7 A Yes.

8 Q Have you ever visited that lab?

9 A No.

10 Q Do you know any people who work
11 there?

12 A No.

13 Q Do you believe the results of that
14 urine drug screening report were accurate?

15 A I have no reason to question it.

16 Q Have you inspected the test
17 procedures that they used?

18 A Just from the standpoint that I know
19 they have a primary screen that's immunochemistry,
20 and then a secondary that's GC/MS.

21 Q Do you know what instruments they
22 used?

23 A Yes.

24 Q What did they use?

25 A GC/MS.

1 CINDY ORSER

2 Q You can't presume I know that. I
3 didn't know that.

4 Can you just contrast immunochemistry
5 with the GC spec that you just stated?

6 A So immunochemistry is like a strep
7 test or a pregnancy. It uses an antibody so it
8 has a grosser level of discrimination. That's why
9 it's at 15 anagram per mil. And then if that's
10 positive, they do a more refined -- which the GC,
11 gas chromatography, mass spectrometry, that's a
12 much more precise and analytical assay on an
13 instrument where you actually fragment the
14 molecules so you see the ion patterns.

15 Q That second test -- is it right to
16 say second test?

17 A A confirmatory test.

18 Q That confirmatory test is over
19 15 nanograms?

20 A Right. That's positive.

21 Q That's positive. So why are the
22 numbers different from one to the other?

23 A It has to do with the level of
24 detection, the LOD.

25 Q It's not passage of time?

1 CINDY ORSER

2 A No. It's just one is way more
3 precise.

4 Q More rigorous in terms of hardware,
5 software, whatever; is that correct?

6 A Right, and just the analysis.

7 Q Do you know what reagents they used
8 to conduct the test?

9 A Not specifically. They didn't list
10 the antibodies or who manufactured the antibodies.
11 Things like that I don't know, but I certainly
12 know the extraction protocol for TC mas spec.

13 Q Do you know what reference materials
14 or quality control samples they used?

15 A I didn't see those listed. But
16 because they're a federally accredited lab, I'm
17 sure they use proper standards.

18 Q Did you ever review instrument
19 calibrations that are performed to do urine drug
20 testing?

21 A No.

22 Q Do you know what accreditations the
23 clinical reference lab has to conduct that
24 testing?

25 A I can't list them, but they're

1 CINDY ORSER

2 accredited. They're a federal testing lab for the
3 DOT. So whatever those standards are, I'm sure
4 they maintain them.

5 Q Do you know if the closure of
6 CannLabs had anything to do with quality issues?

7 A No.

8 Q Do you believe that CannLabs, at
9 least with what you saw in the Certificates of
10 Analysis, were results that were reported to be
11 accurate or of high quality?

12 A I don't really have anything to
13 compare it to.

14 Q I mean are those the types of
15 Certificates of Analysis that you produced at
16 Digipath?

17 A No.

18 Q How are they different at Digipath?

19 A So we test under different mandatory
20 testing requirements. At this time in Colorado,
21 that was what -- I don't even think they were
22 required to do this. This is what they chose to
23 test for, which is potency only. This is only
24 potency.

25 At Digipath, we test for all these

1 CINDY ORSER

2 adulterants as well. So our C of A is two pages
3 and way more data.

4 Q Okay. I mean do you have any reason
5 to believe that what's provided to you here was of
6 low quality or not accurate?

7 MR. BORON: Objection as to
8 form.

9 MR. SHEPS: Objection.

10 A I think this was the state of
11 cannabis testing in Colorado at the time.

12 Q Which has improved since 2012 in your
13 experience; correct?

14 A Yes.

15 Q I might have asked this, but to your
16 knowledge, CannLabs' records would not have been
17 transferred at the closure of that company
18 anywhere that you know of?

19 MR. SHEPS: Objection.

20 A No, I don't know.

21 Q For the EMSL report that is in front
22 of you as Exhibit D, did you inspect in there the
23 assay procedures they used for the hundred
24 milligrams product?

25 A Yes.

1 CINDY ORSER

2 Q Did they use proper procedures?

3 A It appears so.

4 Q How about what instruments?

5 A They used Agilent GC/MS.

6 Q Is that appropriate when testing for
7 the THC?

8 A Yes.

9 Q What about reagents, do you know what
10 reagents they used to conduct the test?

11 A Again, they made an extract in
12 methanol. I mean it's standard.

13 Q They used standard reagents?

14 A As far as I can tell, it was
15 provided.

16 Q Do you know what reference materials
17 or quality control samples they used?

18 A No.

19 Q Do you know what accreditations they
20 have to support that test?

21 A No. As I stated earlier, I couldn't
22 find, because they are an accredited lab, and they
23 have all these documented protocols.

24 Q Here's the question.

25 Can a laboratory develop and validate

1 CINDY ORSER

2 an analytical procedure in-house --

3 A Oh, yes.

4 Q -- without the approval of an
5 accrediting body?

6 A Yes.

7 Q And specifically with respect to a
8 formulated Medical Marijuana product?

9 A Right. But to do that requires at
10 least a month.

11 Q Other than what you've stated in your
12 report as to EMSL, could you generally hold them
13 out as a reputable laboratory?

14 MR. BORON: Objection as to
15 form.

16 A I don't really know. They must be.
17 They have several locations.

18 Q In your report you did reference the
19 Controlled Substances Act; correct? If I can find
20 it, I will tell you where it was.

21 A It's on page 2, the first paragraph.

22 Q Thank you. The Controlled Substances
23 Act, as it pertains to THC, is under the heading
24 of -- let's do this. We've marked this.

25 If you just look at page 2. Do you

1 CINDY ORSER

2 recognize the top front of that page?

3 MR. SHEPS: Just a second.

4 Q You're aware that THC is classified
5 under the Controlled Substances Act as an
6 hallucinogenic substance; right?

7 MR. BORON: Objection as to
8 form.

9 MR. SHEPS: Objection.

10 Q It's a hallucinogenic substance? Is
11 it?

12 MR. BORON: Objection as to
13 form.

14 Q Would you call it a hallucinogenic
15 substance?

16 A No, I wouldn't.

17 Q Well, it's a psychoactive substance;
18 correct?

19 A Right.

20 Q Is that different from a
21 hallucinogenic substance?

22 A In my mind.

23 Q How is it different?

24 A I don't think the end user of THC
25 experiences hallucinogens -- hallucinations when

1 CINDY ORSER

2 they take the product.

3 Q What does psychoactive mean as
4 opposed to hallucinogenic? Can you define
5 psychoactive?

6 A It alters your perception of certain
7 things, but you're not seeing your hot dog talk to
8 you or something.

9 Q Is it your opinion that THC should
10 not be listed in the Controlled Substances Act as
11 a hallucinogenic?

12 MR. BORON: Objection as to
13 form.

14 MR. SHEPS: Objection.

15 A I don't think it should be Schedule
16 1.

17 Q What should be under, if anything?

18 A Schedule 2 or 3.

19 Q Is that because it has medicinal
20 benefits?

21 A Yes.

22 Q So you believe that it should be
23 rescheduled; is that your opinion?

24 A Yes.

25 Q But if you look at the bottom of

1 CINDY ORSER

2 page 2, at the very, very end it says -- well,
3 when defining hallucinogenic substances, it does
4 say unless, and I'm quoting the language, unless
5 specifically accepted or unless listed in another
6 schedule, any material, compound mixture or
7 preparation which contains any quantity of the
8 following hallucinogenic substances, and then it
9 goes on to say a whole bunch of other things.

10 If counsel wants me to read the whole
11 thing, I will, but what it says there is --

12 MR. BORON: Off the record.

13 (Discussion held off the
14 record.)

15 Q THC is number 31 if you look on the
16 fourth page of that statute, a copy of the
17 statute. It states clearly that at least in the
18 definition section that I just read to you, it
19 says which contains any quantity; right?

20 A Right. Mm-hmm.

21 Q It does not say .3 percent there;
22 correct?

23 A Right.

24 Q So isn't it true that if something
25 contains any quantity of THC, it's a controlled

1 CINDY ORSER

2 substance?

3 MR. SHEPS: Objection.

4 MR. BORON: Objection as to
5 form.

6 Q Can you answer?

7 A Well, there are synthetic equivalents
8 that are prescription drugs.

9 Q The statute doesn't make exception in
10 this paragraph at least for synthetic equivalents.

11 A It says right here, synthetic
12 derivatives.

13 Q So any quantity applies to synthetic
14 equivalence?

15 A Yes.

16 Q Okay. Is the formulated product that
17 we're talking about here, Dixie Elixir, is that a
18 synthetic equivalent?

19 MR. SHEPS: Objection.

20 MR. BORON: Objection as to
21 form.

22 A No.

23 Q Again, to your knowledge, where is
24 the -- as you say in your report, where is the
25 federal .3 percent coming from?

1 CINDY ORSER

2 MR. BORON: Objection as to
3 form.

4 MR. SHEPS: Objection.

5 A I don't know.

6 Q Now industrial hemp itself would meet
7 the definition of THC under Schedule 1; would it
8 not?

9 MR. BORON: Objection as to
10 form.

11 MR. SHEPS: Objection.

12 Q My question is specifically
13 industrial hemp.

14 A Right.

15 Q So it would meet the definition of
16 THC under Schedule 1; correct?

17 MR. SHEPS: Objection.

18 MR. BORON: Objection as to
19 form.

20 Q Would you agree with me on that?

21 A In 1974?

22 Q That was when the statute, I think
23 you stated, was first enacted, yes.

24 A So in 1974, yes, if there was THC
25 found in the hemp.

1 CINDY ORSER

2 Q So you're saying that 2012, that's
3 not read properly?

4 A I'm not --

5 MR. SHEPS: Objection.

6 MR. BORON: Objection as to
7 form.

8 A -- a student of the code of federal
9 regulations, so I just wonder if there haven't
10 been amendments since 1974, how is it that Dixie
11 Elixir was able to import industrial hemp in 2012
12 and make products. How could that have happened
13 based on this strict interpretation?

14 Q You would agree with me that
15 industrial hemp is different from a final
16 formulated product that's out for human
17 consumption; right? Do you understand the
18 question?

19 A Restate it.

20 Q There is a difference between
21 industrial hemp and a final formulated Medical
22 Marijuana product like the Dixie Elixir here?

23 A There is difference, but if you're
24 deriving it from hemp, and you're argument is that
25 this prohibits the use of industrial hemp, I mean

1 CINDY ORSER

2 there has to have been amendments to this
3 subsequent to 1974, but before the Farm Act of
4 2014 that enabled this to happen. That's all I'm
5 saying.

6 Q When you're saying "this," you're
7 indicating?

8 A The importation of industrial hemp in
9 2012 to make a product.

10 Q You would agree with me though that
11 the EMSL finding of 170 parts per million would be
12 any quantity of THC; correct?

13 A Yes.

14 Q And the Certificate of Analysis that
15 was provided to you, which does not apply to the
16 product that Mr. Horn took also found any quantity
17 of THC; correct?

18 MR. BORON: Objection as to
19 form.

20 Q Is that correct?

21 A They're reporting a value even though
22 they're saying if it's less than .1 percent it's
23 not detectable. So there is an inconsistency in
24 that as well.

25 Q Well, there is one that says

1 CINDY ORSER

2 .05 percent?

3 A I know. But on the C of A, it's .05,
4 yes.

5 Q So that's any quantity of THC; is
6 that right?

7 MR. BORON: Objection as to
8 form.

9 A We don't know their LOD or their LOQ.

10 Q What does that mean?

11 A We don't know what can lacks --
12 because they say that anything below .1 percent is
13 undetectable, that would mean that it's below
14 their level of quantitation in their
15 instrumentation, but yet they go on to report a
16 level below that after they've already told us
17 they can't detect it.

18 Q That's in one example. But in
19 another example they detected .05 percent, which
20 is below point .1 percent; correct?

21 A I'm just saying it's inconsistent.

22 Q All right. Are you aware of a legal
23 exemption for THC --

24 MR. SHEPS: Objection.

25 Q -- to avoid a controlled substance

1 CINDY ORSER

2 definition?

3 MR. SHEPS: Objection.

4 A No, I'm not.

5 Q In other words, are you aware of the
6 statement that if something is not being offered
7 for human consumption, it actually can have THC in
8 it?

9 A No, I'm not aware of that.

10 Q Going back to the registration that
11 we talked about, if you remember, we talked about
12 registration of manufacturers and distributors and
13 dispensers of controlled substances; right? We
14 were talking about that in the context of EMSL and
15 their registration; right?

16 A Yes.

17 Q Do you know if in 2012 Dixie or
18 Medical Marijuana were registered to manufacture,
19 distribute or dispense controlled substances?

20 MR. BORON: Objection as to
21 form.

22 A I don't know.

23 Q If they weren't registered, they
24 wouldn't be able to manufacture, distribute or
25 dispense it; right?

1 CINDY ORSER

2 MR. SHEPS: Objection.

3 MR. BORON: Objection as to
4 form.

5 A They were able to do that.

6 Q They would lead us to believe that
7 they were registered under the guidelines, the
8 federal guidelines; correct?

9 MR. SHEPS: Objection.

10 MR. BORON: Objection as to
11 form.

12 A We have this huge time period from
13 1974 to 2012.

14 Q Are you saying that in 2012 there was
15 no requirement to be registered to manufacture,
16 distribute or dispense?

17 MR. SHEPS: Objection.

18 MR. BORON: Objection to form.

19 A I don't know, but it doesn't appear
20 to be the case. I don't know any cannabis
21 production lab that has a DEA license.

22 Q You stated earlier though that you're
23 not familiar with the labeling and packaging
24 requirements under federal law; right?

25 A Right.

1 CINDY ORSER

2 Q Have you ever seen a symbol on any
3 labeling whatsoever for a controlled substance?

4 A No.

5 Q I'm going to hand to you what was
6 previously marked on May 8 of 2017 at one of the
7 parties' depositions as Exhibit 24. Can you look
8 at that exhibit, please.

9 Have you ever seen that -- I'm
10 actually referring -- that exhibit is a magazine,
11 and I'm referring you to page 42 of that magazine.

12 A Okay.

13 Q Did you ever see that?

14 A No.

15 Q This is the first time you've ever
16 seen that magazine ad?

17 A Yes.

18 MR. BORON: Objection as to
19 form.

20 MR. SHEPS: Objection.

21 Q This was never provided for you
22 before rendering your report; right?

23 A Not that I recall.

24 Q If you just please take a look at the
25 first paragraph, it says here that the title of

1 CINDY ORSER

2 the article is CBD for everyone.

3 Do you see that?

4 A Yes.

5 Q Using a proprietary extraction
6 process and a strain of high CBD hemp grown in a
7 secret foreign location, Colorado's Dixie Elixirs
8 now offers a new product line called Dixie X which
9 contains 0 percent THC; correct?

10 A Yes.

11 Q I should continue. And up to
12 500 milligrams of CBD. Do you see that?

13 A Yes.

14 Q To your knowledge, from what you
15 reviewed, the launch of these products, and the
16 one that's pictured here, was around -- on or
17 around September 5, 2012?

18 A Okay.

19 MR. SHEPS: Objection.

20 MR. BORON: Objection as to
21 form.

22 Q You actually put that in your report
23 that the launch of the products was September 5,
24 2012.

25 Do you remember that date?

1 CINDY ORSER

2 A No.

3 Q Paragraph 2 on page 2.

4 A I see it, yes.

5 Q So you became aware that was the
6 launch of the product; right?

7 A Yes.

8 Q So after everything that we've
9 testified here to today, would you say that that
10 language is to 0 percent THC is accurate?

11 MR. SHEPS: Objection.

12 MR. BORON: Objection as to
13 form.

14 A It could be.

15 Q It could be. Okay.

16 Are you convinced that every product
17 that was offered by Dixie after it's launch in
18 September, 2012 and over the period of the one
19 month following that, contained 0 percent THC?

20 MR. SHEPS: Objection.

21 MR. BORON: Objection as to
22 form.

23 A I can't emphatically say.

24 Q The Certificates of Analysis that you
25 saw did not contain 0 percent THC, did it?

1 CINDY ORSER

2 MR. SHEPS: Objection.

3 MR. BORON: Objection as to
4 form.

5 A There was a disconnect with them
6 reporting a number that they said was below their
7 detection limit.

8 Q You mean with respect to the entry
9 that said undetectable; correct?

10 A They said that if it was Less than
11 .1 percent, it was undetectable.

12 Q Okay. That was the front page of the
13 CannLabs Certificate of Analysis.

14 A But remember we linked this to the
15 subsequent more detailed analysis.

16 Q You're referring to the one that says
17 max THC at .04 percent?

18 A Yes.

19 Q So that, we think, corresponds to the
20 undetectable certificate; right?

21 A Right.

22 Q So you would say that if it's
23 undetectable, it would be okay for them to say
24 0 percent?

25 MR. BORON: Objection as to

1 CINDY ORSER

2 form.

3 A This is based on their analytical
4 capability.

5 Q I'm simply asking the question as to
6 whether you think that in that ad, that statement
7 of 0 percent THC is accurate given the Cannabinoid
8 assay that at least you saw with respect to that
9 sample showing a .04 percent THC value?

10 MR. SHEPS: Objection.

11 MR. BORON: Objection as to
12 form. It's only an alleged ad. We
13 believe it to be an article.

14 Q Can you answer the question?

15 A There can be variability. There's no
16 specifications, and they haven't provided their
17 methodology. We haven't seen their calibration.
18 I don't even know what instrument they were using
19 to drive these numbers.

20 Q Should they have put those things in
21 their article?

22 MR. SHEPS: Objection to form.

23 MR. BORON: Objection as to
24 form.

25 A I'm just saying that this is -- it's

1 CINDY ORSER

2 not so strict.

3 Q If something says 0 percent THC, does
4 that mean it doesn't have any THC in it?

5 MR. SHEPS: Objection.

6 MR. BORON: Objection as to
7 form.

8 A No detectable THC.

9 Q What about the other assay that says
10 there is detectable THC of .05? Tell me if I'm
11 reading this wrong, but does it say in one of the
12 CannLabs Certificates of Analysis where it says
13 amount per product, .05 percent, that was not
14 undetectable?

15 MR. BORON: Objection.

16 A On the front page, they say if it is
17 less than .1, it is undetectable, and this was the
18 fall of 2012.

19 Q Right. So you're saying that it's
20 not necessarily -- are you saying that it's not
21 necessarily inaccurate to say in an ad 0 percent
22 THC when a sample is undetectable as it states?

23 A Yeah. I think it would have been
24 more accurate.

25 Q I'm sorry?

1 CINDY ORSER

2 MR. SHEPS: I want to note my
3 objection.

4 Can you complete your question?

5 MR. BENJAMIN: What was the last
6 answer?

7 (The requested portion of the
8 record was read back by the
9 reporter.)

10 Q What would have been more accurate?

11 A Say undetectable.

12 Q But you wouldn't have thought that
13 they would -- it would have been better disclosure
14 to list their instruments and all those other
15 things that you mentioned?

16 MR. SHEPS: Objection.

17 MR. BORON: Objection as to
18 form.

19 A In the ad?

20 Q Sure. No. That would be
21 inappropriate; right?

22 MR. SHEPS: Objection.

23 A (Nodding)

24 Q At the bottom, I will refer you at
25 the very last, say, 10 lines towards the bottom,

1 CINDY ORSER

2 do you see the quote from Trip Keber?

3 A Yes.

4 Q The quote from Trip Keber, which back
5 then he was Dixie's managing director -- by the
6 way, do you know what his position now is and
7 where he is?

8 A No.

9 Q His quote was, we are importing
10 industrial hemp from outside the U.S. using an FDA
11 import license -- it's below federal guidelines
12 for THC, which is .3 percent -- and we are taking
13 that hemp and extracting the CBD. We have
14 meticulously reviewed state and federal statutes,
15 and we do not believe that we are operating in
16 conflict of any federal law as it's related to
17 Dixie X and in parentheses it says (hemp derived)
18 products.

19 Is there anything in that statement
20 you find to be false or misleading?

21 MR. BORON: Objection as to
22 form.

23 MR. SHEPS: Objection.

24 A I don't know the specifics about his
25 FDA import license.

1 CINDY ORSER

2 Q Is there anything you believe to be
3 misleading when he says that we, and I'm quoting,
4 "We do not believe we are operating in conflict
5 with any federal law" --

6 MR. BORON: Objection as to
7 form.

8 MR. SHEPS: Objection.

9 Q -- "as it's related to the Dixie X
10 products"?

11 MR. BORON: Objection as to
12 form.

13 MR. SHEPS: Objection.

14 Q Is that a misleading statement?

15 MR. BORON: Objection as to
16 form.

17 MR. SHEPS: Objection.

18 A I don't think so.

19 Q Why would you not say that that's
20 misleading?

21 MR. BORON: Objection as to
22 form.

23 MR. SHEPS: Objection.

24 A He's stating his belief. How can I
25 judge his belief.

1 CINDY ORSER

2 Q I mean with what you've seen in this
3 analysis, would you say that that's inaccurate?

4 MR. SHEPS: Objection.

5 MR. BORON: Objection as to
6 form.

7 A What we've seen is their product is
8 is an order of magnitude below .3 percent if we
9 believe the analysis that we've been provided by
10 CannLabs.

11 Q And if that .3 percent, as you
12 testified and opine, applies to a final consumable
13 product offered to consumers --

14 MR. BORON: Objection as to
15 form.

16 Q -- correct?

17 MR. SHEPS: Objection.

18 MR. BORON: Objection as to
19 form.

20 MR. BENJAMIN: Are you objecting
21 to his objection?

22 MR. SHEPS: No. You asked a
23 two-part question. I'm objecting to
24 both parts of your question.

25 Q Can you answer?

1 CINDY ORSER

2 MR. BORON: Objection as to
3 form.

4 A I'm going to have to hear the
5 question again.

6 (The requested portion of the
7 record was read back by the
8 reporter.)

9 Q Right. That's one premise, if we
10 believe what we have in the CannLabs for the
11 analysis.

12 But a further premise is whether your
13 application of the .3 maximum limit of THC
14 actually applies to a final formulated product;
15 correct?

16 A Mm-hmm. Yes.

17 Q Have you ever seen any YouTube
18 interviews of Trip Keber?

19 A I have not.

20 Q Are you aware on August 8, 2012, on
21 American Weed he actually stated that the Dixie
22 Elixir product we're talking about right here is
23 THC free?

24 MR. BORON: Objection as to
25 form.

1 CINDY ORSER

2 MR. SHEPS: Objection.

3 Q Are you aware of that?

4 A I read that in Mr. Horn's deposition.

5 Q As something that he saw before
6 taking the product; correct?

7 A Yes.

8 Q In fact, on August 23, 2012 in the
9 marijuana report was another YouTube interview
10 where he also stated 0 percent THC and that there
11 was no THC in his products.

12 Did you ever see that?

13 A No.

14 Q Now in your conversation at the
15 conference that you mentioned earlier, did he ever
16 say to you that he was confident that his product
17 had no THC?

18 A No.

19 Q This was previously marked, but it's
20 also marked today, to be more confusing, Orser
21 Exhibit I as in indigo.

22 Can you take a look at that and just
23 read it quickly. I mean take your time to read
24 it.

25 MR. SHEPS: Counsel, did you

1 CINDY ORSER

2 indicate how it had been previously
3 marked?

4 MR. BENJAMIN: Right. It was
5 previously marked as a Graham exhibit
6 at Dr. Graham's deposition as
7 number 9 on December 1, 2017.

8 Q Do you know Tamara Wise? At least
9 this article also purports to be from --

10 A It's a post.

11 Q It's a post that was from
12 beyondthc.com, but also associated with the
13 assurances -- the publication that we spoke about
14 before.

15 MR. SHEPS: Objection. We don't
16 know that it's a publication.

17 Q This appears to be a post, as you
18 point out, where this woman purporting to be
19 Tamara Wise who called herself in this post
20 formally head of Dixie Science.

21 A Do we know it's a woman?

22 Q The pictures show it.

23 A There's a picture? I didn't see a
24 picture. Okay.

25 Q We talked to her and she sounds like

1 CINDY ORSER

2 a woman.

3 So she claims, at least in this post,
4 that was reposted, that she was formerly head of
5 Dixie Science.

6 Do you see that was written there
7 anyway?

8 A Right.

9 Q And she says things -- and I won't
10 read the whole thing for purposes of time, but she
11 says things like the formulations from the CBD
12 hemp products from Dixie, where she worked, were
13 crude and dirty hemp based.

14 I'm quoting that there.

15 A Right.

16 Q Perhaps even contains residual
17 solvent and other toxins as the extraction was
18 done in China.

19 That's a quote from this.

20 A Right.

21 Q She goes on to say it's unfit for
22 human consumption in this article. She says in a
23 sentence, what these companies are doing is
24 critical and dangerous. She says, in fact, MJNAs
25 and it says RSHO, is literally just this

1 CINDY ORSER

2 hemp-based dilated in hemp seed oil.

3 Now, we don't know offhand if MJMA
4 refers to Medical Marijuana. I submit that it
5 does. But she's making -- and she says later in
6 that sentence, what Dixie Botanicals is offering
7 is beyond disturbing. I cannot keep quiet
8 anymore.

9 I didn't mean to read this whole
10 thing. Since I formulated most of these products
11 as head of Dixie Science, I feel responsible for
12 spreading the truth, and I left for ethical
13 reasons.

14 That's what she says in there.
15 That's a lot that she put out.

16 Do you have any opinion as to those
17 statements, either one or multiple of them?

18 MR. BORON: Objection as to
19 form.

20 MR. SHEPS: Objection.

21 A I mean I don't really have an opinion
22 other than it's a good endorsement for why these
23 products should be tested for contaminants.

24 Q THC is not a contaminant?

25 A No.

1 CINDY ORSER

2 Q When you say contaminant, you mean?

3 A Pesticides, residual solvents, mouse
4 feces, microbial.

5 Q All those things that you test at --

6 A Yes. Microbial.

7 Q Yes?

8 A Yes.

9 Q So what she's saying here is more of
10 a safety or --

11 A Quality.

12 Q -- quality issue.

13 With reading this, would we be able
14 to determine whether any of this applies to THC
15 contents?

16 A No.

17 Q We wouldn't be able to determine it,
18 or it specifically does not?

19 A It does not.

20 Q But in your knowledge, the quote
21 unquote head of science would be able to say these
22 statements as to the quality of the product?

23 MR. BORON: Objection as to
24 form.

25 MR. SHEPS: Objection.

1 CINDY ORSER

2 A Presumably.

3 Q I think this is my last exhibit or
4 line of questioning anyway, Orser L. There's two
5 exhibits. That's second to last.

6 If you could take a look, please, at
7 Orser L. I'm only going to turn your attention to
8 one entry on this.

9 MR. SHEPS: For the record, it's
10 marked in a hand annotation on the
11 top as November 30, 2012, FAQ, page 1
12 of 3. The exhibit is a composite of
13 three pages. On the bottom it
14 indicates that it's a source from a
15 website and dated February 23, 2014.

16 Q If you could look, please, at the
17 second page of that exhibit.

18 Do you know what a frequently asked
19 question is?

20 A Yes.

21 Q When I say FAQ, I'm just
22 abbreviating.

23 A Yes.

24 Q To your knowledge, what is a
25 frequently asked question?

1 CINDY ORSER

2 A It's a question that commonly comes
3 up, and so often times people list out those
4 questions with the standard response.

5 Q Is it informational typically to
6 frequently ask questions, promotional, marketing
7 or otherwise?

8 A I'm not in marketing.

9 Q Does Digipath post frequently asked
10 questions?

11 A I don't maintain the website. Maybe
12 they do. I don't know.

13 Q How about Big Sky?

14 A No.

15 Q No, they don't. Okay.

16 So just look, please, at the second
17 page, and I'm looking at the one frequently asked
18 question. What is the difference between -- it's
19 four down --

20 A Right I see that.

21 Q -- between CBD from hemp and CBD from
22 medical cannabis. Do you see that?

23 A Right.

24 Q And it says, quoting, while the two
25 plants are botanically related, our hemp contains

1 CINDY ORSER

2 no THC and numerous medical studies have shown CBD
3 to have significant potential health effects for a
4 variety of ailments ranging from epilepsy to pain
5 management.

6 A Right.

7 Q Then lastly it says: Medical
8 cannabis contains THC and may provide relief from
9 various ailments, however, with a psychotropic
10 effect.

11 So there too on their frequently
12 asked questions, Dixie has said that there's no
13 THC in their products; is that correct?

14 A That's what they say, yes.

15 Q Shouldn't they have put there that
16 there are, say, for example trace amounts of THC?

17 MR. SHEPS: Objection.

18 MR. BORON: Objection as to
19 form.

20 A Yeah. I can't comment going back in
21 time what it is they should have said or shouldn't
22 have said.

23 Q Maybe they should have said there
24 that the amount of the THC was undetectable. Is
25 that what you thought was more appropriate?

1 CINDY ORSER

2 MR. SHEPS: Objection.

3 MR. BORON: Objection as to
4 form.

5 A They could have said below CannLabs'
6 detection limit or whatever in-house testing they
7 may have done. I would note that this is the same
8 person, Tamara Wise, here.

9 Q I'm sorry?

10 A The same person is quoted here.

11 Q Where are you looking? I'm sorry.

12 A The second question. The CBD and
13 Dixie X synthetic.

14 Q Right. Thank you. But at least back
15 then at that timeline, they have --

16 A So it's also interesting if you read
17 CBD from hemp legal. I think that's relevant to
18 this line of questioning today.

19 Q Thank you. They're stating there
20 that it is, quote, legal to consume -- excuse me.
21 CBD wellness products are legal to consume both
22 here in the U.S. and many countries abroad;
23 correct?

24 MR. BORON: Objection as to
25 form.

1 CINDY ORSER

2 A More importantly what they say is the
3 U.S. currently considers industrial hemp products
4 to be legal as long as they are derived from
5 industrial hemp and not from any part of the
6 plants characterized -- categorized under the U.S.
7 Controlled Substances Act as marijuana.

8 Q Okay. So what does that mean with
9 respect that .3 percent maximum THC limit?

10 A I think what they're saying is
11 Schedule 1 doesn't apply to hemp because it's not
12 listed as marijuana. That's how I interpret what
13 they just said here.

14 Q But there is a legal limit from THC
15 from hemp; right? That's the .3 percent number;
16 isn't it?

17 MR. BORON: Objection as to
18 form.

19 MR. SHEPS: Objection.

20 A This is muddled.

21 Q It is muddled; isn't it? It's
22 confusing because it doesn't talk about the legal
23 limits of THC; correct?

24 MR. BORON: Objection as to
25 form.

1 CINDY ORSER

2 MR. SHEPS: I object.

3 Q Right?

4 MR. BORON: Objection as to
5 form.

6 A Right. They don't talk about the
7 cannabinoids. They're just talking about an
8 extract from hemp not being subject to the
9 Controlled Substances Act.

10 Q Knowing what we know now in the
11 Controlled Substances Act that the language is any
12 quantity of those substances listed, and number 31
13 we know is THC.

14 Wouldn't it have been better for them
15 to say in an FAQ before you that's in front of you
16 that perhaps there is some quantity of THC?

17 MR. SHEPS: Objection.

18 MR. BORON: Objection as to
19 form.

20 A I don't know.

21 Q Thank you for pointing out to me that
22 first question.

23 Why was it necessary, to your
24 knowledge, for them to say that Medical Marijuana
25 is a publicly traded company that does not grow,

1 CINDY ORSER

2 sell or distribute any substance that violates
3 U.S. law?

4 MR. BORON: Objection as to
5 form.

6 A Probably because they're a publicly
7 traded company.

8 Q Was that because they did not want to
9 be associated with the THC part of the product of
10 Dixie Elixirs?

11 MR. SHEPS: Objection.

12 MR. BORON: Objection as to
13 form.

14 A I can't comment.

15 Q Do you know about the licensing; do
16 you know of the company Red Dice Holdings?

17 A No.

18 Q Was it Medical Marijuana that held a
19 license, to your knowledge, to manufacture,
20 distribute --

21 A I doubt it --

22 MR. BORON: Objection as to
23 form.

24 A -- because they're public.

25 MR. SHEPS: Objection.

1 CINDY ORSER

2 Q Why would the fact that they be
3 public --

4 A Because Colorado doesn't allow profit
5 sharing as a public entity.

6 Q It's a profit sharing issue?

7 MR. SHEPS: Objection.

8 THE WITNESS: I need a break.

9 (At this time, a brief recess
10 was taken.)

11 CONTINUED EXAMINATION

12 BY MR. BENJAMIN:

13 Q One other question on that exhibit
14 for the FAQs. If you could look at it again,
15 Doctor, please.

16 A Yes.

17 Q If you see there that it says do you
18 test your lab products; do you see that question?

19 A Yes.

20 Q The bottom of the first page.

21 A Yes.

22 Q It says that all of our products are
23 tested multiple times during the manufacturing
24 process --

25 A Right.

1 CINDY ORSER

2 Q -- using both tradition ISO 17025
3 chemical testing facilities --

4 A Yes.

5 Q -- as well as cannabinoid testing
6 facilities, all of which are based in the U.S.

7 Do you see that?

8 A Yes.

9 Q We spoke about that before, what ISO
10 17025 is.

11 A Yes.

12 Q Does that suggest that the Dixie
13 product that Mr. Horn took would have been tested
14 multiple sometimes?

15 MR. BORON: Objection as to
16 form. Isn't this a screen print from
17 years later?

18 MR. BENJAMIN: This is actually
19 dated November 30, 2012. It was
20 printed on -- the bottom, you will
21 see, is printed on February, 2014.
22 This comes from the way back machine,
23 which is the web archive dated
24 November 30. I know it's written,
25 but I can go back and print.

1 CINDY ORSER

2 You'll see here it's October 19,
3 2012.

4 Q Anyway, you see what it says there?

5 A Mm-hmm.

6 Q Wouldn't that suggest that what
7 they're saying in that FAQ is that the product
8 that Mr. Horn would have took would have been
9 tested multiple times during the manufacturing
10 process; right?

11 MR. SHEPS: Objection.

12 A It's an inference.

13 Q And including testing done by
14 cannabinoid testing facilities; right?

15 A Right.

16 Q You weren't provided any of those
17 test results; correct?

18 A That's correct.

19 Q Assuming that statement that they
20 followed the ISO 17025 guideline -- what would
21 call ISO 17?

22 A Standards.

23 Q Standards. Right.

24 So assuming they followed, as they
25 stated here, that standard, why was the

1 CINDY ORSER

2 Certificate of Analysis provided as to the
3 representative sample of October 16 and not the
4 one that Mr. Horn took?

5 MR. BORON: Objection as to
6 form.

7 MR. SHEPS: Objection.

8 A I can't answer that.

9 Q Is that statement as an FAQ is
10 misleading as well; isn't it?

11 MR. SHEPS: Objection.

12 MR. BORON: Objection as to
13 form.

14 Q Can you answer that?

15 MR. BORON: Objection as to
16 form.

17 MR. SHEPS: Objection.

18 A Is this from their website?

19 Q It's from their FAQs.

20 A It certainly seems to suggest they do
21 in-house testing as well as end of product
22 testing.

23 Q Well, my question was, though, if
24 they followed the ISO standards, as you nicely
25 explained to me, there would be a Certificate of

1 CINDY ORSER

2 Analysis for the product that Mr. Horn took.

3 A Correct.

4 Q But as we sit here today, we don't
5 know whether the product that Mr. Horn took was
6 even tested at all; correct?

7 MR. BORON: Objection as to
8 form.

9 MR. SHEPS: Objection.

10 A No, I don't know.

11 Q Then if you can please look at --
12 have you heard of the company HempMeds PX; does
13 that name mean anything to you?

14 A No.

15 Q You never heard of that?

16 A No.

17 Q You don't know the relationship
18 between them and Dixie; right?

19 A No.

20 MR. BORON: Is it a company or a
21 business name?

22 MR. BENJAMIN: It's, I believe,
23 a business name.

24 Q You're not aware of the Dixie brand
25 being sold under that name?

1 CINDY ORSER

2 A No.

3 Q I'm going to give you my last -- what
4 I think is my last exhibit of Orser. It's Orser
5 M, as in Mary.

6 If you could take a look at that,
7 please, and I will call your attention to --

8 MR. SHEPS: Do you have a copy
9 for counsel.

10 MR. BENJAMIN: I don't think I
11 have another one other than the one I
12 have to read.

13 Do you want to give it to your
14 lawyer first before you look at it?

15 MR. SHEPS: For the record,
16 again on the bottom right corner
17 there's a date and time stamp of
18 12/10/2017 at 6:40 p.m. This is an
19 exhibit that contains five pages, and
20 it looks like it is generated from a
21 website hempmedspx.com.

22 Q If you could just take a look,
23 please, at that packet that's been marked as M,
24 and let's just look first at frequently asked
25 question number 3.

1 CINDY ORSER

2 A Okay.

3 Q It says there: Do cannabidiol and
4 (CBD) and other natural hemp-based constituents,
5 show up on a drug test? Under that -- under that
6 FAQ it says most workplace drug screens and tests
7 target Delta 9 tetrahydrocannabinol (THC), and do
8 not detect the presence of CBD or other legal
9 natural hemp-based constituents. However, studies
10 have shown that eating hemp foods and oils can, in
11 rare cases, cause confirmed positive results when
12 screening urine and blood specimens.

13 A Mm-hmm.

14 Q The next paragraph says:
15 Accordingly, if you are subject to any form of
16 drug testing, we recommend (as does the United
17 States Military) that you do not ingest our
18 products before consulting with your health care,
19 drug screening/testing company or employer.

20 And the last paragraph says: For
21 customers looking to avoid THC, we now offer
22 products that are completely THC free. Contact
23 our customer service team to see if a THC free
24 option is right for you.

25 Okay? You saw that language; right?

1 CINDY ORSER

2 A Yes.

3 Q Now I submit to you that HempMeds PX
4 has been stated to be the company that was
5 offering the Dixie Botanicals brand. Pursuant to
6 a letter that the Horns actually received.

7 But looking simply at the information
8 in that frequently asked question, that is
9 actually an FAQ with respect to workplace drug
10 screening; correct?

11 A Yes.

12 Q If I told you that the Dixie
13 Botanical FAQs have changed over the years to
14 include that, that language, would that indicate
15 to you that Dixie, and here HempMeds, was aware
16 that THC produced -- that THC was in their product
17 and produced positive test results?

18 MR. BORON: Objection to form.

19 MR. SHEPS: Objection.

20 A I would interpret this that they knew
21 there could be some THC, but they were making
22 efforts to have THC free products.

23 Q As of the date of the posting of
24 those FAQs; correct?

25 MR. BORON: Objection as to

1 CINDY ORSER

2 form.

3 MR. SHEPS: Objection.

4 A I don't know when they were posted.

5 Q The date that I ran this off was two
6 days ago. And I rightly point out that they state
7 that we now offer products that are completely THC
8 free.

9 A Right.

10 Q So at least in the FAQ here, this is
11 a full disclosure that they are, as of the date of
12 this posting, now offering completely THC free;
13 correct?

14 MR. BORON: Objection as to
15 form.

16 Q Correct?

17 A I don't know when they posted these
18 FAQs.

19 Q But if a consumer saw that, there
20 would be every reason to know not to ingest the
21 product as they even recommend if they're subject
22 to drug screenings; correct?

23 MR. BORON: Objection as to
24 form.

25 MR. SHEPS: Objection.

1

2 Q Is that a fair statement?

3 MR. BORON: Objection as to
4 form.

5 MR. SHEPS: Objection.

6 A I don't know.

7 Q Had you ever reviewed Dixie's FAQs
8 before today?

9 A No. No.

10 Q Are you aware that Dixie took down
11 their FAQs all together?

12 MR. BORON: Objection as to
13 form.

14 MR. SHEPS: Objection.

15 A No.

16 MR. BENJAMIN: Thank you very
17 much, Dr. Orser.

18 (Time noted: 4:58 p.m.)

19

20 * * * * *

21

22

23

24

25

1

2

A C K N O W L E D G M E N T

3

4 STATE OF NEW YORK)

5 ss:

6 COUNTY OF _____)

7

8 I, Dr. Cindy Orser, hereby certify that I
9 have read the transcript of my testimony taken
10 under oath in my deposition of December 12, 2017;
11 that the transcript is a true and complete record
12 of my testimony, and that the answers on the
13 record as given by me are true and correct.

14

15

16

DR. CINDY ORSER

17

18

19
20 Subscribed and sworn to before me

21 This day of 2017.

22

23 _____
(NOTARY PUBLIC)

24

25

1

2

I N D E X

3

WITNESS:

EXAMINATION BY:

PAGES:

4

Dr. Cindy Orser

5

Mr. Benjamin

5

6

7

E X H I B I T S

8

ORSER:

DESCRIPTION:

PAGES:

9

A

Nursing Article

4

10

B

O'Shaughnessy's 2013 Article

4

11

C

Orser Report

4

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D

EMSL Lab Report

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E

EMSL Emails

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F

CannLabs Certificates of
Analysis

4

15

G

Label - Ingredients

4

16

H

Label - Dosage

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Section 1308.11 of CSA

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*** EXHIBITS RETAINED BY COUNSEL ***

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ERRATA SHEET FOR THE TRANSCRIPT OF:

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Case Name: Horn v. Medical Marijuana, et al.

Deposition Date: December 12, 2017

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Deponent: Dr. Cindy Orser

Place: 805 Third Avenue, New York, New York

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CORRECTIONS

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PG

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NOW READS

SHOULD READ

REASON FOR

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Date

DR. CINDY ORSER

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Subscribed and sworn to before me

This day of 2017

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(NOTARY PUBLIC)

C E R T I F I C A T E

I, Terri Fudens, a stenotype reporter
and Notary Public within and for the State of New
York, do hereby certify:

That the witness whose testimony is
hereinbefore set forth was duly sworn by me and
that such testimony is a true record of the
testimony given by such witness.

I further certify that I am not related
to any of the parties by blood or marriage, and
that I am in no way interested in the outcome of
this matter.

IN WITNESS WHEREOF, I have hereunto set
my hand this 21st day of December, 2017.

Terri Fudens



Terri Fudens

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